

## **CHAPTER 12**

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## **ARTICLE 12-4**

### **Construction of Improvements**

#### **Sec. 12-4-10. Purpose.**

The provisions of this Article shall in no way be construed to conflict with the provisions applicable to organization of special improvement districts in the City. It is intended that this Article shall provide procedures for the making of improvements in addition to those procedures applicable to improvements authorized pursuant to special improvement districts organized in the City. (Prior code §3-301; Ord. 892 §1(part), 1976)

#### **Sec. 12-4-20. Permit application; certificate of grade required.**

Every contractor or other person, before laying any curb, gutter, sidewalk, driveway or drainage facility within the City, shall file with the Director of Public Works an application for permit on a form provided by the Director of Public Works. A contractor shall furnish with the application a certificate of grade, certified by a licensed land surveyor or licensed engineer. (Prior code §3-306; Ord. 892 §1(part), 1976)

#### **Sec. 12-4-30. Permit fee.**

The fee for such permit shall be five cents (\$0.05) per front foot or side foot, plus a base fee of five dollars (\$5.00). (Prior code §3-307; Ord. 892 §1(part), 1976)

#### **Sec. 12-4-40. Curb cut permit required.**

No curb shall be cut or section removed unless a permit to do so has been granted by the Director of Public Works in accordance with requirements of the City. (Prior code §3-309; Ord. 892 §1(part), 1976)

#### **Sec. 12-4-50. Construction regulations.**

All curbs, gutters, sidewalks, driveways and drainage facilities shall be constructed in a proper and workmanlike manner using forms approved by the Director of Public Works. (Prior code §3-302; Ord. 892 §1(part), 1976)

#### **Sec. 12-4-60. Construction specifications; conformance required.**

All sidewalks, curbs, gutters, driveways and drainage facilities hereafter laid, construction or reconstructed within the City shall be in strict conformity with the requirements, specifications, rules and regulations of the City and shall be subject to inspection by the Director of Public Works. (Prior code §3-304; Ord. 892 §1(part), 1976)

**Sec. 12-4-70. Approval of line and grade.**

All installations of sidewalks, curb, gutters, driveways and drainage facilities and the lines and grades thereof shall be approved by the Director of Public Works. (Prior code §3-303; Ord. 892 §1(part), 1976)

**Sec. 12-4-80. Removal of nonconforming work.**

The inspector for the City shall have full power to require the removal of any curb, gutter, sidewalk, driveway or drainage facility which does not conform with the requirements of this Article. (Prior code §3-305; Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-90. Gutter obstructions prohibited.**

Gutters shall be kept free from obstruction and interference with flow at all times, and all persons are forbidden from depositing any materials which may cause obstruction or interference with flow in the streets or gutter. (Prior code §3-308; Ord. 892 §1(part), 1976)

**Sec. 12-4-100. Construction of sidewalks.**

(a) Whenever the owner or occupant of any block, lot or part of a lot within the City is required by order of the City Council and notified by the Director of Public Works to construct or repair any sidewalk in front of his or her premises, it shall be the duty of such owner or occupant to cause such improvement to be made in the manner and within the time provided by the order and notice.

(b) The owner or occupant of any block, lot or part of a lot within the City and located adjacent to a major or minor arterial, a collector or a public or private school, or adjacent to a primary transportation route to a public or private school within the corporate limits of the City on which no sidewalk currently exists, shall construct a sidewalk along the entire boundary of the property that abuts the arterial or collector, or school or school route, in full compliance with current applicable public works standards and specifications, according to the schedule and conditions set forth herein.

(1) For all commercial property located adjacent to a major or minor arterial, collector, or a public or private school, or along a primary transportation route to a public or private school, in which no sidewalk currently exists, the owner shall construct the sidewalk, at the owner's sole expense, within ninety (90) days of written notice from the City to do so.

(2) For all residential property located adjacent to a major or minor arterial, collector, or a public or private school, or along a primary transportation route to a public or private school, in which no sidewalk currently exists, the owner shall construct the sidewalk, at the owner's sole expense, within six (6) months of written notice from the City to do so.

(3) Notwithstanding the requirements and time limits set forth in Subsections (a) and (b) above, upon the change of use or change of ownership of any commercial or residential property located adjacent to a major or minor arterial, collector or a public or private school, or along a primary transportation route to a public or private school, in which no sidewalk currently exists, the owner or occupant thereof shall construct a sidewalk in full compliance with current applicable

public works standards and specifications, at the owner's sole expense, within sixty (60) days of the change of ownership or change of use.

(c) Definitions. As used in this Section, the following words shall have the meanings ascribed to them as follows:

(1) *Collector* shall have the meaning ascribed to it in the adopted *City of Brighton Public Works Standards and Specifications Manual*, as the same may be amended from time to time.

(2) *Major arterial* shall have the meaning ascribed to it in the adopted *City of Brighton Public Works Standards and Specifications Manual*, as the same may be amended from time to time.

(3) *Minor arterial* shall have the meaning ascribed to it in the adopted *City of Brighton Public Works Standards and Specifications Manual*, as the same may be amended from time to time.

(4) *Primary transportation route to a public or private school* shall mean any street or road within the corporate limits of the City upon which:

a. A school bus, van or other school vehicle travels to transport students to or from a public or private school within the corporate limits of the City; or

b. School-age children walk or ride bicycles, skateboards, scooters or other similar modes of transportation to or from a public or private school. (Ord. 1756 §1, 2002)

#### **Sec. 12-4-110. Construction ordered upon petition.**

Whenever the City Council receives a petition signed by not less than sixty percent (60%) of the owners of property abutting a public street, curb, gutter, drainage facility or other facility for which improvement thereof is deemed necessary by the City Council, and owning at least sixty percent (60%) of the property abutting thereon, the City Council may, if it deems construction, reconstruction or repair of such street, curb, gutter, drainage facility or other improvement is necessary, order that such construction, repair or reconstruction be accomplished. (Prior code §3-310(2); Ord. 892 §1(part), 1976)

#### **Sec. 12-4-120. Notice of construction.**

The order of the City Council shall be by resolution which shall describe the place where the sidewalk, curb, gutter, street, drainage facility or other improvement shall be constructed, repaired or reconstructed and shall further recite that if the same is not accomplished by the property owner within thirty (30) days from the date the resolution takes effect, the City shall construct, repair or reconstruct the same or cause the work to be done and assess the costs thereof against the adjacent property and the owner thereof, and certify and collect the same as is permitted by law, including a lawsuit against the property owner personally or by certification through the County Treasurer for collection in the same manner as is provided for collection of general property taxes. (Prior code §3-310(3); Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-130. Unpaid assessment penalty.**

A ten-percent penalty on the unpaid assessment shall be added to the assessment to defray the cost of collection. (Prior code §3-310(4); Ord. 892 §1(part), 1976)

**Sec. 12-4-140. Service of notice.**

Notice of the resolution shall be given by service of a copy thereof upon the owner of the adjacent property in person, or by leaving the same at the household of the property owner with a member thereof over the age of eighteen (18) years or by mailing a copy thereof to the owner of such property by certified mail. (Prior code §3-310(5); Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-150. Owner presumed to be person of record.**

The owner, for purposes of this Article, shall be conclusively presumed to be the person of record as shown by the tax records of the County Assessor. (Prior code §3-310(6); Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-160. Work performed by City.**

If any property owner shall fail to construct, repair or reconstruct his or her sidewalk, curb, gutter, street, drainage facility or other improvement when so ordered within thirty (30) days from the date the notice of the resolution is given as provided in this Section and Sections 12-4-100 through 12-4-150 above, the City may construct, repair or reconstruct the sidewalk, curb, gutter, street, drainage facility or other improvement or cause the same to be done. (Prior code §3-311(1); Ord. 892 §1(part), 1976)

**Sec. 12-4-170. Statement for City work.**

Upon completion by the City or at City expense of any such sidewalk, curb, gutter, street, drainage facility or other improvement upon acceptance of the same by the Director of Public Works, the Director of Finance shall prepare a statement of the costs thereof chargeable to the property, including a ten-percent fee for the cost of collection. (Prior code. §3-311(2); Ord. 892 §1(part), 1976)

**Sec. 12-4-180. Notice of assessment and hearing.**

The Director of Finance shall thereupon, by advertisement for a period of three (3) consecutive weeks in a newspaper of general circulation published in the City, notify the owner of the property to be assessed that the improvements have been or are about to be completed and accepted, specifying therein the property and the amount to be assessed thereon and designating therein the time and place for a hearing by the City Council for the purpose of hearing complaints and objections to the proposed assessment. (Prior code §3-311(3); Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-190. Assessment.**

After the public hearing, the City Council shall make any changes in the assessment as may in its judgment be necessary, equitable or just and shall thereupon finally determine the amount of such

assessments and assess the costs of improvements, including a ten-percent penalty thereon to defray the cost of collection. (Prior code §3-311(4); Ord. 892 §1(part), 1976)

**Sec. 12-4-200. Certification and collection of assessment.**

If the assessment is not paid by the property owner to the Director of Finance within thirty (30) days after the assessment has been so finally determined and made by the City Council, the Director of Finance shall certify the assessment to the County Treasurer, who shall extend the same upon the tax roll and collect the same as other general property taxes assessed against the property. (Prior code §3-312; Ord. 892 §1(part), 1976; Ord. 1589, 1999)

**Sec. 12-4-210. Separate assessment for each owner.**

In case such order of the City Council includes any of such improvements abutting lots or lands of more than one (1) owner, the same shall be included in one (1) resolution ordering the same, but the cost, when determined by the City Council, shall be assessed against each abutting property and the owner thereof separately according to the cost of construction, repair or reconstruction of such improvement abutting on each lot or parcel of land respectively. (Prior code §3-313; Ord. 892 §1(part), 1976)

**Sec. 12-4-220. Emergency sidewalk repair; Council authority.**

If it appears to the City Council that any sidewalk is in such a state of repair as to endanger the traveling public, it may, upon its own motion by resolution, order that the same be repaired forthwith. In case the same is not repaired within three (3) days after notice thereof, given to the owner as provided in Section 12-4-80 above, the City may repair the same and assess the cost thereof against the adjacent property and the owner thereof. If the cost of such repair is not paid within thirty (30) days, the Director of Finance shall certify and collect the same as provided in this Article for other assessments. (Prior code §3-314; Ord. 892 §1(part), 1976)

## **ARTICLE 12-8**

### **Sidewalk, Curb or Gutter**

**Sec. 12-8-05. Obstruction of public places.**

It is unlawful for any person to erect, place or maintain or cause to be erected, placed or maintained any obstruction on any sidewalk, street, alley or other public place in the City without written authorization from the City. (Prior code §3-101; Ord. 908 §2(part), 1976)

**Sec. 12-8-10. Snow and ice obstruction on sidewalks.**

(a) It is unlawful for any person who is owner, tenant or occupant, or any agent, servant, representative or employee of such owner, tenant or occupant having control of any lot, block or parcel of land within the City to allow any snow, sleet, ice or other obstruction to accumulate or remain upon any sidewalk adjoining such lot, block or parcel of land within the City for more than

twenty-four (24) hours after the time of the last accumulation of such snow, sleet, ice or other obstruction.

(b) In the event any of the provisions of this Section are violated, the City Manager may serve, either personally or by regular mail, postage prepaid to the last known address of the addressee, a written notice upon the owner, tenant, occupant or agent, servant, representative or employee of such owner, tenant or occupant having control of the subject property where the violation of this Section exists, to comply with the provisions of this Section. Service thereof shall be deemed complete upon personal delivery, or after forty-eight (48) hours from the date of mailing in the event the mail notice is not returned to the sender.

(c) If the address of the person to be notified, as provided in this Section, is unknown or the mail notice is returned undelivered, the notice may be served by posting the same in a conspicuous place on the property where the violation exists, in which event service of the notice shall be deemed complete as of the date of posting.

(d) In lieu of giving notice after a violation of this Section occurs, the City Manager may, in his or her sole discretion, give notice in advance of any violation, in the manner provided for herein to the owner, tenant or occupant of any property in the City of the provisions of this Section and of the right of the City to abate any violation of this Section and assess the cost of such abatement to the owner, tenant or occupant of such property.

(e) If the person upon whom such notice is served fails, neglects or refuses to abate the violation of this Section, the City Manager, without further notice, may cause the necessary work to be performed to bring such property into compliance with this Section and thereafter reasonable efforts shall be made to notify the owner, tenant or occupant of the costs thereof, plus the charges authorized in this Section. However, in no event shall failure of the owner, tenant or occupant to receive notice of the costs and charges void the lien provided for in this Section. The costs of such work plus the actual costs to the City caused by such violation, including City personnel time and overhead, as determined by the City Manager, in an amount not less than fifty dollars (\$50.00), in the event payment thereof is not made to the City within thirty (30) days after completion of the work, shall become a lien against the subject property as of the date the Director of Finance certifies the costs and charges to the office of the County Treasurer, for collection in the same manner as general property taxes are collected. (Ord. 1299 §1, 1988; Ord. 1589, 1999)

#### **Sec. 12-8-15. Refusal to remove obstructions.**

Whenever the owner or representative of the owner of any obstruction standing or encroaching upon any street, alley, sidewalk or other public place in the City refuses or neglects to remove the same as required by the City upon receipt of a written notice from the City Manager directing such removal, the City may cause the obstruction to be removed or taken down and the expense thereof charged to the owner or other person responsible for such obstruction. Abatement of such obstruction and assessment of the cost thereof by the City shall be in addition to any other appropriate action permissible for violation of this Code. (Prior code §3-102; Ord. 908 §2(part), 1976; Ord. 1589, 1999)

**Sec. 12-8-20. Owner or tenant maintenance responsibility.**

The responsibility for maintenance and repairs to the sidewalk, curb or gutter is solely the responsibility of the owner (or his or her tenant) of the property abutting such sidewalk, curb or gutter. The property owner or his or her tenant shall be liable for any damages arising as a result of defects or failure to maintain properly the sidewalk, curb or gutter adjacent to his or her property. (Prior code §7-B510(b); Ord. 894 §1, 1976)

**Sec. 12-8-30. Penalties.**

Any person found guilty or pleading guilty or nolo contendere to violating any provisions of this Chapter shall be punishable by a fine of not more than three hundred dollars (\$300.00) or by incarceration of not more than ninety (90) days in jail, or both. No written or verbal notice of warning of violations shall be required prior to a criminal prosecution for violation of this Chapter and such prosecution may occur regardless of whether nuisance abatement procedures are or are not commenced. (Ord. 1335 §4, 1989; Ord. 1589, 1999)

**ARTICLE 12-12**

**Excavations**

**Sec. 12-12-10. Permit required.**

It is unlawful for any person to dig up, open, excavate or cause to be dug up, opened or excavated any street, alley, sidewalk or other public place belonging to the City without having first secured a permit therefor from the Director of public works. (Prior code §3-211(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-20. Permit kept on site.**

Such permit shall be kept at the site of the excavation while the work is in progress and shall be exhibited upon request to any police officer, the Director of Public Works or any other authorized representative of the City. (Prior code §3-211(2); Ord. 890 §1(part), 1976)

**Sec. 12-12-30. Work prohibited without permit; double fee.**

Any person making a cut or excavation in any street, alley, sidewalk or other public place belonging to the City without first having obtained a City permit as provided in this Article shall have all operations suspended by the Director of Public Works and shall obtain a City permit applicable to that particular cut or excavation and shall pay twice the usual fee that would have been charged if a permit had properly been obtained prior to making the cut or excavation. Such penalty fees shall be in addition to any penalties that may be imposed by a court for violation of this Article. (Prior code §3-211(3); Ord. 890 §1(part), 1976)

**Sec. 12-12-40. Permit procedure for emergency work.**

Any person may make an emergency cut or excavation in any street, alley, sidewalk or other place belong to the City. However, such person must, the first working day after making such cut or

excavation, notify the Director of Public Works of such cut or excavation and obtain a permit and pay the required fees. Should such person fail to make this notification and obtain the required permit, the matter will be dealt with as provided in Section 12-12-30 of this Code. (Prior code §3-211(4); Ord. 890 §1(part), 1976)

**Sec. 12-12-50. Application contents.**

Application for a permit to excavate shall be made upon a form provided by the Director of Public Works and shall recite specifically and illustrate by sketch or plan the exact location and the approximate depth, length, width, extent, nature and purpose of the excavation desired to be made, the purpose for which the privilege is requested, the duration of time required for work and the amount of the permit fee, and any other pertinent data requested by the Director of Public Works. (Prior code §3-212; Ord. 890 §1(part), 1976)

**Sec. 12-12-60. Permit-issuance requirements.**

Every applicant, before being granted a permit under the provisions of this Article, shall, in addition to the filing fee required in Sections 12-12-120 and 12-12-130, furnish the City with proof of insurance in such form as is approved by the Director of Public Works with an insurance company licensed to do business in the State with the following provisions for coverage:

- (1) Bodily injury liability including motor vehicle in the amount of:
  - a. One hundred thousand dollars (\$100,000.00) for each person,
  - b. Three hundred thousand dollars (\$300,000.00) for each accident.
- (2) Property damage liability including motor vehicle in the amount of:
  - a. Twenty-five thousand dollars (\$25,000.00) for each occurrence,
  - b. Fifty thousand dollars (\$50,000.00) aggregate.

(3) Such proof of insurance shall be specified for all operations of the permittee and for all of his or her vehicles to be used in the course of his or her operations in the City. (Prior code §3-226; Ord. 890 §1(part), 1976)

**Sec. 12-12-62. License and/or permit bond.**

(a) Every applicant, before being granted a permit under the provisions of this Article, shall, in addition to the filing fee required in Sections 12-12-120 and 12-12-130 and the proof of insurance as required in Section 12-12-60, provide a standard City license and/or permit bond from an approved treasury-listed bonding agency licensed to do business in the State. The amount of the bond shall be based on the average cost of each occurrence of R.O.W. disturbance and shall be established by the City Council in the annual fee resolution. This permit/license bond shall cover all construction activity by the permittee in the public R.O.W. and easements owned by the City for the period of time as stated on the permit/license bond on file with the City.

(b) A letter of responsibility will be accepted in lieu of a license/permit bond from the Public Service Company, United Power, US West and Jones Intercable.

(c) If construction is not completed in accordance with the appropriate permit, the City may recover all or part of said bond in order to restore the City property back to its original condition or complete construction in accordance with the permit, provided that written notice is given by the Public Works Department to the applicant. (Ord. 1417 §1(part), 1992)

**Sec. 12-12-66. Other security.**

In the event the valuation of the work proposed in the permit request exceeds the amount established for the license/permit bond pursuant to Section 12-12-62, the Director of Public Works may require any of the following:

(1) Bonds in an amount not less than the total construction cost for each job shall be submitted prior to the issuance of any permits:

- a. Labor/material bond,
- b. Performance bond, and
- c. Maintenance bond.

(2) Increase of said license/permit bond on file. (Ord. 1417 §1(part), 1992)

**Sec. 12-12-70. Authority of Director of Public Works.**

The Director of Public Works shall grant permits to dig in, cut, open, excavate or cause to be dug up, opened, cut or excavated any street, alley, sidewalk or other public place belonging to the City to persons desiring to do the work for which a City permit is required under the provisions of Section 12-12-10. (Prior code §3-213; Ord. 890 §1(part), 1976)

**Sec. 12-12-80. Conditions of permit issuance.**

All City permits shall be issued hereunder according to the provisions of this Article and subject to such rules, directions and limitations regarding the time to be required for the work and the manner in which the work is to be performed as the Director of Public Works may prescribe. (Prior code §3-215(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-90. Conformance required.**

Such permits issued hereunder shall be on the condition that all work performed there under shall be in accordance with this Article and the requirements of the Director of Public Works, all of which are intended to provide for the proper care and protection of the streets, alleys, sidewalks and other public places of the City and persons and property of the general public. (Prior code §3-215(2); Ord. 890 §1(part), 1976)

**Sec. 12-12-100. Limitation to work allowed.**

All permits issued hereunder shall be on the condition that all work done thereunder shall be only such work as is allowed by the City and specified in a contract with the City or the permit issued pursuant to this Article. (Prior code §3-215(3); Ord. 890 §1(part), 1976)

**Sec. 12-12-110. Permittee qualifications.**

Permits shall be issued under the provisions of this Article only to those persons who are licensed as excavators or determined by the Director of Public Works to be duly qualified as excavators or licensed sewer contractors, structural contractors, special contractors, sidewalk contractors, paving contractors, general contractors, sewer layers or plumbers performing the work for which they are licensed. (Prior code §3-215(4); Ord. 890 §1(part), 1976)

**Sec. 12-12-120. Fees required.**

Applicants shall pay a fee as hereinafter provided to the Director of Public Works before the issuance of any permit under the provisions of this Article for administrative inspection and replacement costs incurred by the City due to the excavation. No permit issued under the provisions hereof shall be for more than one (1) excavation project. (Prior code §3-216(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-130. Fee schedule.**

Permit fees for excavations to be made pursuant to this Article shall be charged the applicant in accordance with a schedule of fees to be set by resolution duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary. (Ord. 1042 §1, 1980)

**Sec. 12-12-140. Recordkeeping requirements.**

The Director of Public Works shall keep a record of all applications made for excavation or cut permits and of the permits so issued. It shall be the duty of every person to furnish, upon request of the Director of Public Works, information regarding the location in any street, alley, sidewalk or other public place of the City of any pipe or other structure installed, maintained or utilized by such person. (Prior code §3-218; Ord. 890 §1(part), 1976)

**Sec. 12-12-150. Boring or tunneling required.**

If the Director of Public Works determines it to be in the best interests of the City to require the applicant to bore, jack or tunnel a utility line or other line that is to be placed in the public right-of-way, instead of making a street cut or excavation therefor, he or she shall have authority to impose such requirement and issue a permit for such boring, jacking or tunneling. (Prior code §3-214; Ord. 890 §1(part), 1976)

**Sec. 12-12-160. Limitations on obstructing streets.**

It is unlawful to stop up or obstruct more than the space of one (1) block and one (1) intersection at any one (1) time in any one (1) street or to keep the same blocked up for more than one (1) day after the repair is completed unless permission is first obtained from the Director of Public Works. (Prior code §3-217; Ord. 890 §1(part), 1976)

**Sec. 12-12-170. Barricades required.**

It is unlawful for any person to dig or cause to be dug any hole, cut, drain, ditch or any other excavation in any street, alley, sidewalk or other public place belonging to the City, without providing during the nighttime sufficient warning lights to be placed with suitable barricade or temporary fence around such hole, cut, drain, ditch or other excavation. During the daytime, the barricade or temporary fence shall be maintained and kept in place, but warning lights shall not be required. (Prior code §3-219(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-180. Traffic safety devices required.**

Every hole, cut, drain, ditch or other excavation in any street, alley, sidewalk or other public place belonging to the City shall be further protected at all times by traffic safety devices as prescribed by the Director of Public Works in order to minimize the disruption of the flow of traffic in the vicinity of the work. (Prior code §3-219(2); Ord. 890 §1(part), 1976)

**Sec. 12-12-190. Damaging or removing safety device.**

It is unlawful to damage, displace, remove or interfere with any barricade or temporary fence, warning light or any other safety device which is lawfully placed around or about any hole, cut, drain, ditch or any other excavation or construction work in any street, alley, sidewalk or other public place belonging to the City. (Prior code §3-220; Ord. 890 §1(part), 1976)

**Sec. 12-12-200. Protection of utilities.**

The applicant for any permit hereunder shall be directed and is hereby required to inquire of the utility companies as to the location of underground facilities which might be affected by the proposed cut or excavation. (Prior code §3-221; Ord. 890 §1(part), 1976)

**Sec. 12-12-210. Backfill and surface specifications.**

Backfills and surface repairs shall be made in accordance with the plans and specifications furnished by the Director of Public Works. Such plans and specifications shall conform with accepted engineering standards and shall be specifically adapted to the particular conditions of travel, load requirements, terrain and subsoil moisture where the backfill is to be affected. (Prior code §3-222(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-220. Duty to make corrections.**

In the event of settlement, subsidence or failure of a repair made by permittee of a particular excavation, cut or part thereof within a period of one (1) year after the street repair is completed,

permittee who had performed the excavation work shall be notified by the Director of Public Works and given reasonable opportunity to correct the condition to the satisfaction of the Director of Public Works. If permittee fails to correct the condition to the satisfaction of the Director of Public Works and the City is required to correct the condition, permittee shall be responsible for repaving and repair costs occasioned thereby in addition to the fees provided for in Section 12-12-130 of this Article. Furthermore, permittee shall discontinue any and all other work within rights-of-way within the City, and shall be issued no additional street cut permits until such time as the required repair has been completed and paid for. (Prior code §3-222(2); Ord. 890 §1(part), 1976)

**Sec. 12-12-230. Restoration of flexible or rigid streets.**

Permittee doing work in or under flexible or rigid streets shall immediately replace material in their cuts and compact this material to a density of at least ninety-five percent (95%) of maximum dry density as determined in accordance with the American Association of State Highway Officials Designation T-99. When permittee certifies the cut has been filled and the density requirements are met, the job shall then be turned over to the City for surfacing. (Prior code §3-223(1); Ord. 890 §1(part), 1976)

**Sec. 12-12-240. Restoration of undeveloped street.**

Cuts made by any person in any gravel or undeveloped street or in any borrow ditch in a right-of-way in the City shall be restored by the applicant to its original condition. (Prior code §3-223(2); Ord. 890 §1(part), 1976)

**Sec. 12-12-250. Restoration of public property by City.**

If, after due notice by the Director of Public Works, permittee fails to complete his or her work within forty-eight (48) hours subsequent to such notice, the City may complete the work created by any cut or excavation authorized by the permit issued hereunder. The costs of such completion shall be charged by the City to permittee in addition to the permit fees provided in Section 12-12-130 of this Article. (Prior code §3-223(3); Ord. 890 §1(part), 1976)

**Sec. 12-12-260. Restoration of public property by permittee.**

If the Director of Public Works determines it to be in the best interests of the City to allow or require permittee to resurface the cut or excavation in or under any flexible or rigid street instead of the City doing so, the Director of Public Works may authorize such completion of the job according to his or her specifications and in his or her discretion based upon cost savings to the City, adjust accordingly the permit fees provided for in this Article; provided, however, that if such alternate method is determined by the Director of Public Works to be in the best interests of the City, the following minimum requirements shall be complied with:

- (1) Permittee shall replace the material in such cuts, compact backfill by jetting and rolling or vibrating to the density specified in this Section and Section 12-12-230 and resurface the cut immediately with a temporary or permanent type patch.

- (2) The backfill shall immediately be surfaced in a manner so as to duplicate the original surface as nearly as careful workmanship and availability of materials permit. However, a

temporary patch may be of cold plant-mixed asphaltic concrete, an adequate treatment of prime oil or other similar material of such a nature as to yield a smooth driving surface of sufficient durability to endure the period of its intended use.

The required permanent patch shall be accomplished within fifteen (15) days following the availability of proper material. The permanent patch shall be a minimum of three (3) inches of hot plant-mixed asphaltic concrete. (Prior code §3-223(4); Ord. 890 §1(part), 1976)

**Sec. 12-12-270. Restoration to original conditions.**

At the conclusion of work on any street cut or opening within public right-of-way, the entire area shall be left in its original condition. All waste construction or excavating materials shall be removed from the site. Any ditches, gutters, culverts, storm sewer works or drain pipes shall be left open, unblocked and in operating condition. (Prior code §3-223(5); Ord. 890 §1(part), 1976)

**Sec. 12-12-280. Liability of permittee.**

Any person who shall undertake work pursuant to a permit issued under the provisions of this Article or to perform work under contracts with the City or by virtue of permission obtained from the City Council shall be answerable for any damage occasioned to persons, animals or property by reason of carelessness or negligence connected with such work, and by obtaining a permit for such work shall thereby be deemed to consent and agree to hold the City harmless from any such damage or injury. (Prior code §3-225; Ord. 890 §1(part), 1976)

**Sec. 12-12-290. Hindering or obstructing work unlawful.**

It is unlawful to hinder or obstruct any work, including any resurfacing operation, cut or excavation operations conducted in accordance with the provisions of this Article. (Prior code §3-224; Ord. 890 §1(part), 1976)

## **ARTICLE 12-16**

### **Use of Public Places**

#### *Division 1 General*

**Sec. 12-16-10. Purpose and objectives.**

(a) Purpose. This Article provides requirements and procedures to be followed for the use of public property for private purposes, including placement of structures and facilities, encroachments and other activities within or upon any public property. To achieve these purposes, it is necessary to require permits for permanent and temporary private uses of public property, to establish procedures, to impose and collect fees and charges and to establish a means to regulate and enforce private use of public property.

(b) Objectives. There are occasions when public and private uses of public property should be accommodated; however, the City must ensure that the primary public purpose of the property is maintained to the greatest extent possible. In addition, the use and the integrity of public property should be protected, competing uses reconciled and the public safety preserved. All private use of public property, whether permanent or temporary, is secondary to the public objectives. This Article is intended to provide a balance between the public need to protect and maintain public use of public property and private use of public property. It, thus, has several objectives:

- (1) To ensure that the public safety is maintained and that public inconvenience is minimized;
- (2) To protect the public property, its improvements and infrastructure;
- (3) To facilitate private use of public property through the standardization of regulations;
- (4) To maintain an efficient process;
- (5) To establish a public policy for enabling the City to discharge its public trust for public property consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- (6) To assure that the City can continue to fairly and responsibly protect the public health, safety and welfare. (Ord. 1908 §1, 2008)

#### **Sec. 12-16-20. Definitions.**

All definitions contained in Section 1-4-10 of this Code are hereby adopted and made applicable to this Article, and, in addition thereto, the definitions stated herein shall apply except where the context clearly indicates a different meaning.

*Business extension* means any extension of a business or commercial use of and occupation by customers on or below the grade level of public property immediately adjacent to an existing building.

*City Manager* means Brighton's City Manager or the Manager's designee, including but not limited to the Planning and Community Development Director.

*Distributor* is the person responsible for placing and maintaining newsracks in public rights-of-way.

*Encroachment* means a private special event; sidewalk sale; improvement; structure; public furnishing; telecommunications facility; newsrack; kiosk; installation of any structure, facility or improvement of any nature under, on or above public property; or obstruction extending into or located within, upon, above or under any public property, right-of-way, sidewalk, easement, park or other public place.

*Fence* means any artificially constructed barrier of wood, masonry, stone, wire, metal or any other material or combination of materials erected to enclose, partition, beautify, mark or screen areas of land.

*Kiosk* means a permanent, freestanding structure located upon public property and used for posting commercial notices or advertisements, or for the sale of merchandise, including food, publications and favors.

*Landscaping* means materials including, without limitation, grass, groundcover, shrubs, vines, hedges or trees and nonliving natural materials commonly used in landscaped developments, as well as attendant irrigation systems.

*Newsrack* includes any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers, other news periodicals or commercial publications.

*Obstruction* means any encroachment, including landscaping, plant, bush, tree or structure of any sort or kind which projects beyond the property line of property abutting public rights-of-way, sidewalks, easements, parks and other public places which obstructs and/or prevents full and unfettered use of any public property, rights-of-way, sidewalks, easements, parks and other public places; obstructs the view of traffic; obscures any traffic control device; or otherwise constitutes a hazard to users of the public property.

*Parkway* is that area between the sidewalk and the curb of any street and, where there is no sidewalk, that area between the edge of the roadway and property line adjacent thereto. *Parkway* shall also include any area within a roadway which is not open to vehicular travel.

*Permittee* means the person and the person's affiliates and successors, that receives a permit subject to the conditions of this Article.

*Public furnishing* means a unique feature or object or item intended for the public comfort or convenience including, by illustration, a fountain, sculpture, bench, bicycle rack, rest room, trash container, kiosk or planter.

*Sale* or *sell* means the exchange of goods or services for money or other valuable consideration.

*Special event* means a temporary commercial or festive event or promotion utilizing a booth, table, rack, structure or cart or other display equipment conducted on public property.

*Structure* means anything constructed or erected *with* a fixed location below, on or above grade, including, without limitation, foundations, utilities, fences, retaining walls, awnings, balconies and canopies.

*Temporary use* means any use of any public property, right-of-way, sidewalk, easement, park and other public places for a specified period not exceeding thirty (30) days. (Ord. 1908 §1, 2007)

#### **Sec. 12-16-30. Encroachments/obstructions prohibited.**

No person shall erect or maintain, or refuse to remove the same when ordered to do so, any building, structure, fence, barrier, post, landscaping, public furnishing, encroachment or obstruction of whatever nature, under, above or upon any public property, right-of-way, sidewalks, easements,

park and other public places, without first obtaining a permit therefor in accordance with this Article, as amended, unless otherwise exempt. No commercial use or activity shall be permitted upon or in any public place unless such use or activity is specifically authorized pursuant to this Article. (Ord. 1908 §1, 2007)

**Sec. 12-16-40. Public nuisance.**

An encroachment or obstruction placed upon, maintained or permitted to remain on any public property, right-of-way, sidewalk, easement, park and other public place contrary to the terms of this Article, this Code and the codes, rules and regulations of the City, as the same may be amended, constitutes a public nuisance that may be abated, removed or enjoined by the City in accordance with Article 8-24 of this Code. Should it be necessary for the City to remove the encroachment or obstruction, any personal property removed in whole shall be deemed abandoned property as provided in Article 2-20, of this Code. (Ord. 1908 §1, 2007)

**Sec. 12-16-50. Exemptions.**

The following uses shall not require the application for a permit:

- (1) Excavations for which a permit has been issued pursuant to Article 12-12 of this Code.
- (2) Peddlers, transient merchants, itinerant merchants or itinerant vendors who have obtained a license pursuant to Article 5-48, of this Code.
- (3) Mobile vendors who have obtained a license pursuant to Article 5-98, of this Code.
- (4) Landscaping required, installed and maintained pursuant to an approved plan as part of a development review application in accordance with the Land Use and Development Codes of the City, including, by illustration, Subsection E., Section V. Development Standards, of the Zoning Code; Subsection h., Streetscape, Section II. of the Residential Design Standards; Subsection A.h., Article 16-20, Improvements, of the Subdivision Regulations; and the Commercial Design Standards, as set forth in Chapter 16 of this Code and in the Land Use and Development Code and such other codes, rules and regulations of the City; as the same may be amended from time to time.
  - a. Notwithstanding the exemption of this Paragraph (4), no landscaping shall impair or impede the use or utility of the right-of-way or easement for its designated purpose, including attendant irrigation systems, nor shall any landscaping cause or create any encroachment or obstruction of required sight distance for users of the public street, alley, sidewalk or right-of-way.
  - b. Encroaching landscaping planted or maintained in accordance with a permit issued pursuant to this Article or exempted by this Paragraph (4), shall be maintained so that there is eight (8) feet of overhead clearance above and eighteen (18) inches of side clearance from any roadway, sidewalk and path at all times of the year, except that flowers and similar insubstantial plantings which have no capacity to impede pedestrian or bicycle traffic and grow no higher than twelve (12) inches may extend to the edge of the traffic facility.

(5) Fences.

a. Fences required, installed and maintained pursuant to an approved landscape plan as part of a development review application in accordance with the Land Use and Development Codes of the City including, by illustration, Subsection C., Section V. Development Standards, Zoning Code; Subsection h., Streetscape, Section II., Residential Design Standards; Subsection A.h., Article 16-20, Improvements, Subdivision Regulations; and the Commercial Design Standards, as set forth in Chapter 16 of this Code and in the Land Use and Development Code and such other codes, rules and regulations of the City, as the same may be amended from time to time.

b. Fences in public utility easements, but not in public rights-of-way or public access or emergency access easements, that meet the following criteria:

1. Do not obstruct or impede access to public utilities for construction, reconstruction and/or maintenance by the City, its authorized agents or any public utility or franchise;
2. Do not obstruct or impede the conveyance of surface runoff in drainage swales or drainage ways;
3. Maintain a six-foot parallel separation from any publicly owned and operated underground utility including, without limitation, water, sewer and storm sewer mains currently in place, except for easement crossings; and
4. Are designed and constructed with materials and in such a manner which permit ease of removal by the property owner or the City in the event such removal is necessary for the maintenance or proper use of the public easement.

c. Notwithstanding the issuance of a fence permit pursuant to this Article or the exemption of this Subsection, no fence shall impair or impede the City or utility of the right-of-way or easement for its designated purpose, nor shall any fence create any encroachment or obstruction of required sight distance for users of the public street, alley, sidewalk or right-of-way

(6) Newsracks.

a. Any newsrack that is placed entirely or partially upon any public property, right-of-way or parkway which projects onto, into or over any part of a public right-of-way shall comply with the following standards and be located as hereinafter provided:

1. No newsrack shall be placed or maintained which projects onto, into, or over any travel portion of a street, alley, walkway, sidewalk, path or other public way which would substantially interfere with or impede the full and unfettered pedestrian or vehicular traffic use thereof, the ingress or egress to any residence or place of business or the use of fire hydrants.
2. No newsrack shall be placed, installed, used or maintained:

- a) Within three (3) feet of any marked crosswalk;
  - b) Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility;
  - c) Within five (5) feet of any driveway; or
  - d) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet, unless such passageway is already restricted by the placement of a permanent utility pole or other similar permanent fixture and the placement of the newsrack adjacent to that fixture will not substantially reduce the remaining clear space available for pedestrian passage.
- b. Upon determination by the City Manager that a newsrack has been installed, used or maintained in violation of the provisions of this Article, an order to correct such violation will be issued to the distributor of the newsrack. Such order shall be telephoned to the distributor and confirmed by mailing a copy of the order to the distributor.
- 1. The order shall specifically describe the violation and suggest actions necessary to correct the violation.
  - 2. Failure by the distributor to correct the violation within seven (7) days, excluding Saturdays, Sundays and legal holidays, after the mailing date of the order shall result in the removal of the newsrack by the City, and the same shall be deemed abandoned property as provided in Article 2-20 of this Code.
- c. The distributor may appeal the written notice as provided in Section 12-16-190 of this Article.
- d. The filing of the notice of appeal to the City Council shall stay the removal of any newsrack until the City Council makes its final determination, unless the newsrack presents a clear and present danger of imminent personal injury or property damage. Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power or, in the event of an emergency, to remove a newsrack.
- e. In the event a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned and may be removed by the City, and the same shall be deemed abandoned property as provided in Article 2-20 of this Code. (Ord. 1908, §1, 2008)

**Sec. 12-16-60. Application required.**

Any person desiring to use, encroach on or obstruct all or any portion of a public street, alley, sidewalk, easement, right-of-way, park, open space or other public property not otherwise exempt shall file with the Director of Planning and Community Development a written application for a permit upon a form prepared and provided by the City.

- (1) The application for a permit shall contain the following:

- a. The applicant's name, address and such telephone and fax numbers as may be required by the City Manager;
- b. Identification of the entity, organization, sponsor or person responsible for the use, encroachment, obstruction or structure and the applicant's relation thereto;
- c. The proposed location of the permitted use, encroachment, obstruction or structure;
- d. The purpose of the proposed use, encroachment, obstruction or structure;
- e. A statement that the applicant, individually and as a representative of the responsible party, agrees to abide by the provisions of this Article, this Code and other applicable codes, rules and regulations, as the same may be amended from time to time;
- f. A description of the proposed use, encroachment, obstruction or structure in sufficient detail to fully inform the City Manager of the character and physical attributes of the use, encroachments, obstruction or structure as deemed necessary by the City Manager to perform a complete and competent investigation of the application under the criteria contained in this Article;
- g. The anticipated duration of the proposed use, encroachment, obstruction or structure;
- h. Evidence of the applicant's ability and willingness to provide liability insurance insuring the City in an amount set by this Article or the City Manager prior to issuance of insurance the proof of which insurance shall be provided to the City prior to issuance of the permit, unless the requirement to provide such insurance is waived by the City Manager; and
- i. Such other information as may be reasonably required by the City Manager or Director of Planning and Community Development.

(2) If the proposed encroachment or use is for the purpose of serving food and/or beverages for consumption within the encroachment area as an extension, accessory or complementary to an adjoining business, the application shall also contain a statement that the applicant is the fee owner of the real property directly adjoining the public property upon which the encroachment is sought or, if the applicant is not the fee owner of such real property, the adjoining property owner's written consent to the encroachment.

(3) The application shall include such information as may be required by the City Manager to certify compliance with the applicable criteria contained in Land Use and Development Codes of the City including, by illustration Subsection N., Section V. Development Standards, Zoning Code, as set forth in Chapter 16 of this Code, and such other codes, rules and regulations of the City, as the same may be amended from time to time. (Ord. 1908, §1, 2008)

#### **Sec. 12-16-70. Investigation of application; fee; modification.**

(a) The Director of Planning and Community Development shall refer any application for the issuance of a permit required by this Article for review and comment to the following departments of the City:

- (1) City Manager;
- (2) Community Development, including Building Inspection;
- (3) Public Works;
- (4) Police;
- (5) Parks and Recreation;
- (6) Other appropriate City agencies; and, as necessary;
- (7) Chief of the Fire Protection District; and
- (8) Tri-County Health Department.

Review and comment shall be made for the purpose of determining whether the permit as applied for meets the requirements of this Article and other applicable ordinances, codes, rules and regulations of the City, as amended.

(b) The City Manager may decline to accept or process an application due to incompleteness or lack of compliance with this Article or other ordinances, codes, rules and regulations.

(c) Unless additional time for review and comment is requested by any department or agency, the departments and agencies shall, within ten (10) business days from the date the application is received for review and comment, return written comments, suggested conditions and recommendation to the City Manager. Failure to request more time, return a recommendation or comments or otherwise notify the City Manager of the response of the department or agency shall constitute recommended approval of the application by the department or agency.

(d) After receipt of comments, recommendations or conditions from the departments and agencies to which the application has been submitted, the City Manager shall either approve, approve with conditions that are necessary to protect the public welfare or deny the application.

(e) In considering any application for review and approval, the City Manager shall consider the requirements of this Article, this Code and all applicable codes, rules and regulations, as the same may be amended from time to time. In no case shall an application for a use, encroachment, obstruction or structure be approved if, in the judgment of the City Manager, the same constitutes a public hazard, is a nuisance or will impair or unreasonably interfere with the use of the public property, right-of-way, sidewalks, easements, parks and other public places by the public.

(f) The permit may be issued for such duration and upon such other terms and conditions as the City Manager determines.

(g) Application for modification of a permit shall be required of the applicant if there is any change in the location, size or configuration of the area that is the subject of the permit and/or there is any other change or alteration of the use, encroachment, obstruction or structure unless such change

or modification was required or specifically authorized by the City Manager upon the issuance of the permit.

(h) At the time of issuance of a permit hereunder, and at the time of any modification of such permit, the applicant shall pay a fee to defray the costs incurred by the City in processing and administering the permit, including, without limitation, the cost of inspecting the premises that are the subject of the application. The amount of the fee shall be set forth in the Annual Fee Resolution of the City Council.

(i) Appeals.

(1) The applicant may appeal any decision of the City Manager as provided in Section 12-16-190 of this Article.

(2) The filing of the notice of appeal with the City Council shall stay the decision of the City Manager until the City Council makes its final determination, unless there is a clear and present danger of imminent personal injury or property damage. Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power or, in the event of an emergency. (Ord. 1908, §1, 2008)

#### **Sec. 12-16-80. Temporary permits.**

(a) The City Manager may issue temporary use permits for temporary events which include, by illustration, special events, sidewalk sales, park use and limited-time street closures upon a finding that the location or area proposed to be used and the impact of the business or activity to be conducted comply with all applicable City ordinances, codes, rules and regulations, including the receipt of any required sales tax or other licenses, and that such use will not unreasonably obstruct public access and passage or otherwise constitute a health or safety hazard. The City Manager may impose reasonable conditions in the permit to ensure adequate public access and unobstructed passage and to protect the public health, safety and welfare.

(b) Temporary use permits, as provided for herein, shall not include temporary construction obstructions as provided in Section 12-16-120 below.

(c) Permits for temporary uses shall not extend beyond December 31 of the year in which they are issued unless specifically provided in the permit. Permitted private use or occupation of public places shall be limited to the period specified in the permit.

(d) The City Manager shall issue the permit, with or without conditions, no later than twenty (20) business days after the submission of a complete application and prepayment of requisite fees, or mail to the address of the applicant a written statement of denial setting forth the reason for such denial. Failure to issue the permit within twenty (20) days shall be deemed approval of the permit as stated in the application.

(e) Appeals.

(1) The applicant may appeal any decision of the City Manager as provided in Section 12-16-190 of this Article.

(2) The filing of the notice of appeal with the City Council shall stay the decision of the City Manager until the City Council makes its final determination, unless there is a clear and present danger of imminent personal injury or property damage. Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power or, in the event of an emergency. (Ord. 1908 §1, 2008)

**Sec. 12-16-90. Special events; conditions.**

It is unlawful for any person to conduct or participate in a special event by selling, or offering or soliciting for sale, goods or merchandise upon any street, alley, sidewalk or other public property, or to suspend such articles from any structure over the street, sidewalk or public property without first obtaining a permit from the City Manager. Issuance of permits shall be subject to the following conditions:

(1) Not more than one (1) sidewalk sale, garage sale or other similar special event on public property shall be permitted for any person in a thirty-consecutive-day period.

(2) The number and frequency of all other special events shall be determined on a case-by-case review, taking into consideration public health, safety and welfare as well as wear and tear and competing uses of the public property.

(3) The permit holder shall be responsible for cleanup during and immediately following each day of activity, as well as mitigating any potential adverse impact to adjacent properties caused by the event.

(4) Each participant in a special event shall conspicuously display a sign identifying the permittee and the event sponsor, if any. (Ord. 1908 §1, 2008)

**Sec. 12-16-100. Business extensions; conditions.**

It is unlawful for any person to construct or place any improvements, structures, fixtures, tables, chairs, benches or other customer accommodations within a business extension without first obtaining a permit from the City Manager as set forth in this Article. Permits shall be subject to the following conditions:

(1) An applicant for a business extension permit in which food or beverage service is provided shall obtain recommendation of approval from the Tri-County Health Department and submit written verification from the Department in conjunction with the application.

(2) An applicant for a business extension permit in which alcoholic beverage service is provided shall obtain approval of the premises from the Liquor Licensing Authority of the City and submit evidence thereof in conjunction with the application.

(3) All business extensions shall be contained within and defined by a removable physical barrier; be designed and constructed in accordance with the permit and applicable design guidelines of the Planned Unit Development, overlay zone district, approved development or the Downtown Development Authority District in which it is located; and be compatible with and complements the aesthetic and design characteristics of the neighborhood.

(4) No improvements, structures, fixtures, equipment, accommodations or improvements shall be placed or maintained on the public property except during the term specified in the permit.

(5) All business extensions shall be adequately illuminated to provide safety for the public. All such illumination shall be designed, constructed and maintained in such a manner that the same does not adversely impact or interfere with the use of the public property and adjacent privately owned property and shall comply with all applicable ordinances, codes, rules and regulations. (Ord. 1908 §1, 2008)

**Sec. 12-16-110. Public furnishings; conditions.**

It is unlawful to install, maintain or provide public furnishings on public property without first obtaining a permit from the City Manager as set forth in this Article, subject to the following conditions:

(1) Public furnishings shall serve the public health, safety and convenience or shall enhance the aesthetic quality of the site of placement.

(2) If located in a Planned Unit Development, overlay zone district, approved development or the Downtown Development Authority District, public furnishings shall be designed and constructed in accordance with the applicable design standards and guidelines, and the same shall be compatible with and complement the aesthetic and design characteristics of the neighborhood.

(3) No public furnishings shall be placed or maintained on the public property except during the term specified in the permit.

(4) Public furnishings shall comply fully with all applicable ordinances, codes, rules and regulations, as the same may be amended from time to time. (Ord. 1908 §1, 2008)

**Sec. 12-16-120. Temporary construction or obstruction; conditions.**

It is unlawful for any person to construct, alter, maintain, repair, relocate, restore, refurnish or demolish any building, structure or improvement located on public property, or adjacent thereto, if such construction, repair, demolition, relocation, restoration or refurbishment shall create any obstruction or barrier or partial obstruction or barrier, of the public property without first obtaining a permit from the City Manager as set forth in this Article, subject to the following conditions:

(1) The permittee shall comply with all applicable requirements of this Code and other applicable ordinances, codes, rules and regulations, as the same may be amended from time to time.

(2) Sufficient barriers, warnings, lighting or other measures will be provided and at all times maintained during the project to ensure the safety of persons and protection of property, public and private, from damage.

(3) All required pedestrian walkways and canopies shall be provided and maintained in a safe and weather-resistant condition pending completion of the project.

(4) Unless otherwise stated in the permit, the duration of the temporary construction or obstruction shall be one hundred eighty (180) consecutive days, provided that the permit may be renewed upon demonstration of a need therefor and compliance with all applicable ordinances, codes, rules and regulations. (Ord. 1908 §1, 2008)

**Sec. 12-16-130. Fences and other improvements; conditions.**

It is unlawful to install, build, maintain, place or erect a fence, other improvement or structure not otherwise specifically exempt on public property without first obtaining a permit from the City Manager as set forth in this Article, subject to the following conditions:

(1) The applicant shall submit an accurate plot plan showing the location, size and type of construction of the proposed improvement or structure.

(2) The City Manager shall review the proposal to determine whether the fence would create a hazard of injury to persons or damage to property, or constitute an interference, burden or hindrance to the maintenance or use of public property or facilities. (Ord. 1908 §1, 2008)

**Sec. 12-16-140. Amplified sound.**

Electronically amplified sound shall not be permitted for any use or activity contemplated by this Article, except during a temporary use or special event as specifically approved in the permit. No such amplified sound, however, shall be in excess of that permitted by Article 8-32, of this Code. (Ord. 1908 §1, 2008)

**Sec. 12-16-150. Insurance required; waiver.**

(a) Each permittee shall at all times maintain liability insurance naming the City as an additional insured in an amount required by the City Manager, but in no event in an amount less than the limit of liability set forth in Section 24-10-114, C.R.S., of the Colorado Governmental Immunity Act as amended. The required insurance coverage shall be evidenced by a certificate, signed by an agent of an insurance carrier authorized to conduct business in the State verifying the City's insured status and setting forth the limits of each policy, the policy number and name of insurer, the effective and expiration dates of each policy and a copy of an endorsement placed on the submitted policy requiring ten (10) days' notice by mail to the City Manager prior to policy cancellation for any reason.

(b) The applicant may petition the City Manager for a full or partial waiver of the insurance requirement. The City Manager shall review the request for waiver and may grant, deny or conditionally grant the relief requested in consideration of the following standards:

(1) The use or activity proposed does not expose the public to any significant or unusual hazard or risk; and/or

(2) The applicant has sufficient resources and financial accountability to demonstrate financial security in the satisfaction of potential tort claims.

(c) City departments, the Downtown Development Authority, persons holding a franchise with the City and any governmental entity or agency shall be relieved of the obligation of submitting a

certificate of insurance, provided that the certificate shall be issued in the name of the City, department, entity or agency. (Ord. 1908 §1, 2008)

**Sec. 12-16-160. Indemnification.**

(a) Each permittee shall construct, maintain and operate its use, encroachment, obstruction and/or structure in a manner that provides protection against injury or damage to persons or property. The permittee, for itself and its related entities, agents, employees, subcontractors and the agents and employees of the subcontractors shall save the City harmless, defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the City for all its reasonable expenses, as incurred, arising out of the construction, installation and operation of the permitted use, encroachment, obstruction or structure on public property of any kind, including but not limited to the actions of the permittee, its employees, agents, contractors, related entities, successors and assigns, or the securing of and the exercise by the permittee of the rights granted in the permit, including any third party claims, administrative hearings, actions for copyright infringement and litigation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Article.

(b) The permittee shall have the right to defend the City with regard to all claims, suits, demands, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, the permittee refuses to defend the City or the City elects to defend itself with regard to such matters, the permittee shall pay all actual expenses incurred by the City related to its defense, including reasonable attorneys' fees.

(c) If the City institutes litigation against the permittee for a breach of the permit or for an interpretation of this Section, and the City is the prevailing party, the permittee shall reimburse the City for all costs related thereto, including reasonable attorneys' fees.

(d) The permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due solely to the gross negligence, or any intentional or willful acts of the City or any of its officers, employees or agents. If the permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act and the Colorado Constitution. (Ord. 1908 §1, 2007)

**Sec. 12-16-170. Security deposit; waiver and reduction.**

(a) In addition to the payment of permit fees, applicants for a temporary use or special events requiring the permittee to maintain the affected public area in a safe, clean and orderly condition shall submit a deposit in the amount set forth in the City's Annual Fee Resolution to secure such performance. In the event of the failure to comply with the cleanup conditions, the amount of costs and expenses incurred by the City to secure compliance, along with an administrative fee of twenty percent (20%), shall be retained by the City. The security deposit, or balance thereof, if any, shall be refunded at the expiration of the term or prior to relinquishment of the public property and discontinuance of activity, whichever event first occurs. If costs are incurred by the City during the term of the permit and activity thereunder continues, the permit holder shall, upon notice of such costs, replenish the security deposit to the full amount required by this Section. Failure to replenish the security deposit as directed shall be deemed a termination of the permit.

(b) The applicant may, in writing, petition for a waiver or reduction of the security deposit. The City Manager may waive the deposit upon a finding that the subject activity involves no tangible items capable of creating litter and otherwise will require no restoration of good order to the affected public area. The City Manager may otherwise reduce the amount of security deposit reflecting a showing of less potential costs of cleanup due to a reduced likelihood of litter and a short period of the activity; however, such reduced amount of security shall not be less than twenty-five dollars (\$25.00). (Ord. 1908 §1, 2008)

**Sec. 12-16-180. Revocation of permit; notice; appeal.**

(a) A permit issued pursuant to this Article shall be revocable by the City Manager, whether or not such right to revoke is expressly reserved in such, upon a determination that:

(1) Misstatements or omissions of material facts have been submitted in the application for the permit.

(2) The Permittee violates or permits the violation of any term, condition or restriction contained in the permit.

(3) The Permittee failed to construct, install or maintain the encroachment, obstruction or structure as stated in the application.

(4) The Permittee failed to conduct the use of the public property as stated in the permit.

(5) The use or activity permitted constitutes a public safety hazard or nuisance.

(6) A violation of the ordinances, codes, rules and regulations of the City, or state or federal law or regulation, is occasioned by the use or conduct associated with the permit.

(7) A determination by the City Council that the discontinuance of the encroachment, obstruction or use is necessary in order to achieve any public purpose.

(b) If the City Manager makes a determination of the existence of an emergency and that the discontinuance of the use or activity contemplated by the permit or other activity exempted from the permit requirement is necessary in order to protect or preserve the immediate public health or safety, the use of the public property shall cease immediately upon receipt of written notice to the permittee.

(c) Appeals.

(1) The permittee may appeal any decision of the City Manager as provided in Section 12-16-190 below.

(2) The filing of the notice of appeal with the City Council shall stay the decision of the City Manager until the City Council makes its final determination, unless there is a clear and present danger of imminent personal injury or property damage. Nothing contained in this Section shall be interpreted to limit or impair the exercise by the City of its police power, or in the event of an emergency.

(d) Upon revocation or expiration of the permit, the permittee shall promptly cease any use, remove any associated encroachment, obstruction, structure, material or equipment from the public property and restore the public property to its prior condition. If, after reasonable notice and demand for removal, the permittee fails to comply, the items shall be deemed abandoned, the City shall be authorized to remove and dispose of the same, and the holder shall be responsible to pay the City all reasonable costs of removal, storage and restoration.

(e) Should it be necessary for the City to remove the encroachment or obstruction, any personal property removed in whole shall be deemed abandoned property as provided in Article 2-20, of this Code.

(f) The applicant shall not be entitled to the refund of any fee upon such revocation. (Ord. 1908 §1, 2008)

### **Sec. 12-16-190. Appeals.**

Any applicant, permittee or distributor aggrieved by a decision of the City Manager as provided for in this Article may appeal the same in accordance with the following:

(1) The appellant may, by written notice within seven (7) business days of notice of the decision or action of the City Manager, request an informal meeting with the City Manager with regard to the appeal thereof. The informal meeting shall be held within five (5) working days from the date of the City Manager's receipt of the request.

(2) The appellant may, by written notice of appeal, appeal the decision or action of the City Manager directly to the City Council. The notice of appeal shall be filed within ten (10) business days of the decision or action of the City Manager or, if a request for informal meeting has been filed, within ten (10) business days of the informal meeting with the City Manager. The notice of appeal shall identify the decision, notice or action of the City Manager from which the appeal is being taken and shall briefly state the basis for such appeal and a request for a hearing before the City Council. The City Council shall set the matter for hearing within thirty (30) days of the receipt of the notice of appeal. The filing of the notice of appeal shall stay the action or decision of the City Manager until the City Council makes its final determination, unless the use presents a clear and present danger of imminent harm or damage. Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power or in the event of an emergency.

(3) A decision of the City Council shall be final as to the City, but subject to appeal of the appellant to the District Court pursuant to Rule 106 of the Colorado Rules of Civil Procedure, as amended. (Ord. 1908 §1, 2007)

*Division 2*  
*Telecommunications Facilities*

**Sec. 12-16-200. Penalties; civil remedies.**

(a) It shall be unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Article, and where no specific penalty or remedy is provided therefor, the penalties and civil remedies of violation of any provision of this Article shall be in accordance with Article 1-24 of this Code, including punishment by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment.

(b) Every day any violation of this Article continues shall constitute a separate offense. (Ord. 1908 §1, 2007)

**Sec. 12-16-210. Policy; use of public property for telecommunications facilities.**

(a) The City Council finds that the City has received requests from telecommunications service providers wishing to locate their telecommunications facilities on City-owned sites and facilities and that a uniform policy for reviewing these requests is desirable. Sections 12-16-210 through 12-16-260 of this Article establish the City policy on the use of City-owned sites and facilities for telecommunications facilities.

(b) The provisions, policies and requirements contained in Sections 12-16-210 through 12-16-260 are in addition to the development standards specified in Subsection N., Commercial Mobile Radio Service (CMRS) Facilities, Section V., Development Standards, of Chapter 16 of this Code. (Ord. 1908 §1, 2007)

**Sec. 12-16-220. Priority of users.**

The City Manager will give priority in the use of City-owned sites and facilities for telecommunications facilities to the following entities in descending order:

- (1) The City;
- (2) Public safety agencies, including law enforcement, fire and ambulance services that are not a department or agency of the City and private entities for uses that serve public safety;
- (3) Other governmental agencies for uses not related to public safety; and
- (4) Entities providing commercial mobile radio services (CMRS), licensed commercial wireless telecommunication services, including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services marketed to the public. (Ord. 1908 §1, 2007)

**Sec. 12-16-230. Minimum requirements.**

The placement of telecommunications facilities on City-owned sites and facilities must comply with the following requirements:

- (1) The telecommunications facility will not interfere (electronically or otherwise) with the primary intended purpose for which the City owns the site or facility;
- (2) The applicant is willing to obtain adequate liability insurance and commit to a license or permit agreement that includes equitable compensation for the use of public sites and facilities and other necessary provisions and safeguards. The fees shall be established by the City Council after considering rates paid for comparable sites and facilities, potential expenses, risks to the City and other appropriate factors consistent with this policy;
- (3) The telecommunications facility will not interfere with other users with higher priority as discussed in Section 12-16-220 above;
- (4) Upon reasonable notice, the City Manager may require removal of telecommunications facilities at the applicant's expense;
- (5) The applicant must reimburse the City for any costs which the City incurs because of the presence of the applicant's telecommunications facilities;
- (6) The applicant must obtain all necessary land use approvals and comply with all applicable laws, ordinances, codes, rules and regulations; and
- (7) The applicant will cooperate with the City's efforts to promote co-location and, thus, limit the number of separate telecommunications facility sites requested. (Ord. 1908 §1, 2007)

**Sec. 12-16- 240. Special requirements.**

The use of certain City-owned sites and facilities, such as water towers, tanks, reservoirs, plants and parks, for locating telecommunications facilities, results in special concerns due to the unique nature of such sites. Placement of telecommunications facilities on these special City-owned sites shall be permitted only upon satisfaction of the following additional requirements:

- (1) Water sites and facilities. The City's water towers, tanks, reservoirs, plants and other facilities (water sites and facilities) represent a large public investment. Protection of the City's water supply is of prime importance to the City. As access to the City's water system increases, the potential for contamination of the public water supply increases. Therefore, the City Manager may consider placement of telecommunications facilities at or on water sites and facilities only after considering the recommendation of the water utility enterprise and when the placement will satisfy the following requirements:
  - a. The applicant's access to the telecommunications facility will not increase the risks of contamination to the City's water supply;

b. There is sufficient room on the site or facility to accommodate the applicant's telecommunications facility;

c. The presence of the telecommunications facility will not increase operation or maintenance cost to the City; and

d. The presence of the telecommunications facility will not impair the health or safety of workers or other persons operating, maintaining or frequenting the water site or facility.

(2) Parks. The presence of certain telecommunications facilities may present a potential conflict with the purpose of some City-owned park sites and facilities. If the telecommunications facility will not impair the health of workers or other persons operating, maintaining or frequenting the park facility, the City Manager may issue a permit for telecommunications facilities in the following park sites and facilities after considering the recommendation of the Parks and Recreation Department and Board:

a. Public parks of a sufficient scale and character, adjacent to an existing commercial or industrial use;

b. Commercial recreation areas and major play fields; and

c. Park maintenance facilities.

(3) The foregoing special requirements on health and safety are subject to the provisions of 47 U.S.C. § 332(c)(7)(B)(iv). (Ord. 1908 §1, 2007)

#### **Sec. 12-16-250. Permit required; application.**

Except as is specifically provided in Sections 12-16-210 through and including 12-16-260 of this Article and as limited in 47 U.S.C. § 332(c)(7)(B)(iv), applications for and issuance of permits for the location of telecommunication facilities shall be in accordance with Section 12-16-60 and Section 12-16-70 of this Article. (Ord. 1908 §1, 2007)

#### **Sec. 12-16-260. Termination.**

(a) The City Manager may terminate any license or permit if he or she determines that any of the following conditions exist:

(1) A potential applicant with a higher priority cannot find another adequate location, and the potential use would be incompatible with the existing use;

(2) An applicant's broadcast unreasonably interferes with other applicants of a higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis;

(3) An applicant violates any of the standards in this policy or the conditions attached to the permit; and

(4) If the City Manager makes a determination of the existence of an emergency and that the termination of the telecommunication facility use or activity is necessary in order to protect or preserve the immediate public health or safety, the telecommunication facility use of the public property shall cease immediately upon provision of written notice to the permittee.

(b) Appeal.

(1) The permittee may appeal the termination decision of the City Manager as provided in Section 12-16-190 of this Article.

(2) The filing of the notice of appeal to the City Council shall stay the termination decision of the City Manager until the City Council makes its final determination, unless there is a clear and present danger of imminent personal injury or property damage. Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power, or in the event of an emergency.

(3) Upon termination, the permittee shall promptly cease any use, remove any associated telecommunication facilities from the public property and restore the public property to prior condition. If the permittee, upon reasonable notice and demand for removal, fails to comply, the items shall be deemed abandoned, and the City shall be authorized to remove and dispose of the same, and the permittee shall be responsible to pay the City all reasonable costs of removal, storage and restoration.

(4) Should it be necessary for the City to remove the telecommunication facilities, any personal property removed in whole shall be deemed abandoned property as provided in Article 2-20 of this Code.

(5) The permittee shall not be entitled to the refund of any fee, charge or payment previously made upon such termination. (Ord. 1908 §1, 2007)

**Sec. 12-16-270. Reservation of right.**

(a) Nothing in this Article shall vest, or be deemed to vest, any property right, estate or interest in persons using the public domain under the terms of this Article, the uses and occupations permitted hereunder being authorized only in order to enhance the general public welfare and interests and during the approved period of use or occupation.

(b) Notwithstanding the above, the City reserves the right to deny, for any reason, the use of any or all City-owned sites or facilities to any one (1) or all applicants. (Ord. 1908 §1, 2007)

## ARTICLE 12-20

### Trails and Open Space

#### **Sec. 12-20-10. Short title.**

This Article shall be known and cited as the City of Brighton Trails and Open Space Ordinance. Reference to Ordinance No. 1429 and the applicable section shall be sufficient when citing the provisions of this Article in any legal document, including but not limited to summons, subpoena, pleading, summons and complaint and memorandum. (Ord. 1429 §1, 1992; Ord. 1589, 1999)

#### **Sec. 12-20-20. Applicability.**

Unless otherwise provided, this Article applies to all open space areas and trails belonging to the City or within the possession and control of the City, any trail or bikeway right-of-way in a park or recreational district, or any governmental, quasi-governmental or public corporation or entity, whether located within or without the corporate boundaries of the City, excluding such public lands designated as *park*. (Ord. 1429 §1, 1992)

#### **Sec. 12-20-30. Trails and open space defined.**

As used in this Article, *trail* means and refers to any designated area whether on-street or off-street or generally a pathway for nonmotorized bikes and pedestrians; *open space* means and refers to any public land designated as floodways, flood channels or any other green space not specifically called and designated as *park*. (Ord. 1429 §1, 1992)

#### **Sec. 12-20-40. Permitted uses.**

Within the open spaces of the City, the uses allowed shall be picnicking and other passive activities; within the trail right-of-way the uses allowed shall be bicycling, walking, hiking and jogging. The Director of Public Works is further authorized to place appropriate signage through the public open spaces and trails which may assist in advising the public of the permitted activities and prohibitions contained herein. (Ord. 1429 §1, 1992)

#### **Sec. 12-20-50. Prohibited activities.**

No person shall engage in activities of the following nature in the public open spaces and trails of the City:

(1) It is unlawful for any person to drive or operate on any bike path, trail or other open space of the City any motorized vehicles, including but not limited to automobiles, trucks, motorcycles, motorized bicycles and snowmobiles, except motorized wheelchairs and other similar devices operated by handicapped persons. Maintenance vehicles of the City are permitted upon such public lands for maintenance purposes, and police and emergency vehicles are further allowed for emergency purposes.

(2) It is unlawful for any person:

a. To throw, discharge or otherwise place or cause to be placed in the water of any pond, lake, stream, river or other body of water in or adjacent to any trail or open space area, or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters.

b. To dump, deposit or leave any bottles, glass containers, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage or refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any trail or open space, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided, all such rubbish or waste shall be carried away from the trail or open space by the person responsible for its presence, and properly disposed of elsewhere.

(3) It is unlawful for any person:

a. To deface, tear down, remove, destroy or injure in any manner whatsoever, or to cause to be defaced, torn down, destroyed or injured in any manner whatsoever, any fence, building, furniture, seat, signs, structure, excavation, post, bracket, lamp, awning, fireplug, hydrant, water pipe, tree, shrub, plant, flower, railing, bridge, culvert or any other property whatsoever belonging to the City in, at or upon any trail or open space owned or controlled by the City;

b. To injure or damage, or cause or permit to be injured or damaged, in any manner whatsoever, any property of the City at, in or upon any trail or open space by cutting, hacking, bending, breaking, burning, daubing with paint or other substances, or by means of fire, or by effecting such injury or damage in any other manner;

c. To move or remove any trail or open space property for any reason whatsoever, other than in case of emergency;

d. To roll, throw or otherwise move any rocks or boulders in any of the trails or open spaces belonging to the City; or

e. To pick or take away from any trail or open space any vegetation.

(4) It is unlawful for any person:

a. To carry, possess or consume any malt, vinous or spirituous liquors or fermented malt beverages at, in or upon any trail or open space owned or controlled by the City except as ordered or approved by the City Council;

b. To have in his or her possession any open container containing any malt, vinous or spirituous liquor or fermented malt beverage while at, in or upon any trail or open space owned or controlled by the City.

(5) It is unlawful for any person to be at, in or upon any trail or open space owned or controlled by the City in such a manner as to willfully interfere with the free and unobstructed use of such trail or open space by any other person. (Ord. 1429 §1, 1992)

## ARTICLE 12-30

### Special Improvement Districts

#### Sec. 12-30-10. Legislative declaration.

It is hereby declared as a matter of legislative determination:

(1) This Article being necessary to secure the public health, safety, convenience and welfare, it shall be liberally and broadly construed to effect its purposes.

(2) Nothing in this Article shall be construed to limit the City Council to the procedures specified in this Article or the City's ability to impose assessments for the construction or improvement of public improvements on benefited properties, provided that the City has established alternative procedures by ordinance. (Ord. 1882 §1, 2006)

#### Sec. 12-30-20. Definitions.

The provisions of Article 1-4 of this Code, shall apply unless otherwise defined in this Article. Except where the context otherwise requires, the provisions of Article 1-4 and those set forth herein shall govern the construction hereof:

*Acquire* or *acquisition* means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the federal government, any public body or person, endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract or other acquirement (or any combination thereof) of facilities, other property, any project or an interest therein, authorized in this Article.

*Assess* or *assessment* means the levy of a special assessment against any tract specially benefited by any project to defray wholly or in part the cost of the project, which assessment shall be made on an equitable basis which may include front foot, lot, zone, sub zone, area or other equitable basis as may be determined by the City Council. The City Council may take into account zoning, present or intended use, current assessed and market value and location or proximity to the project. In no event shall any assessment exceed the estimated maximum special benefits to the tract assessed as determined by the City Council.

*Assessable property* means the tracts of land specially benefited by any project, the cost of which is wholly or partly defrayed by the City by the levy of assessments, except any tract owned by the federal government, in the absence of its consent to the assessment of any tract so owned, and except any street or other public right-of-way of a municipality or public body, as provided in Section 12-30-610 hereof.

*Assessment lien* means a lien on a tract created by ordinance of the City to secure the payment of an assessment levied against that tract, as provided in Section 12-30-490 hereof.

*Assessment unit* means a unit or quasi-improvement district designated by the City Council for the purpose of petition, remonstrance and assessment in the case of a combination of projects, pursuant to Section 12-30-140 hereof.

*Bond* means a special obligation payable from special assessments and any other special fund authorized by law, pursuant to Section 12-30-720 hereof and thereafter.

*Combined sewer projects* means one (1) integrated project consisting of a sanitary sewer project and a storm sewer project, as hereinafter defined, and shall consist wholly or in part of combined storm and sanitary sewers.

*Corporate district* means any school district, drainage district, irrigation district, conservancy district, housing authority, urban renewal agency, any other corporate district, any other corporate authority, any corporate commission or other political subdivision of the State constituting a body corporate. The term *corporate district* is used in contradistinction to the term *district*.

*Cost* or *costs* of the project or any phrase of similar import means all or any part designated by the City Council of the cost of any facilities, project or interest therein, being acquired and of all or any property, rights, easements, privileges, agreements and franchises deemed by the City to be necessary or useful and convenient therefor or in connection therewith, which cost, at the option of the City Council, may include all or any part of the incidental costs pertaining only to the project, including without limiting the generality of the foregoing, preliminary expenses advanced by the City from funds available for use therefor in the making of surveys, preliminary plans, estimates of cost, assessment plats, other preliminaries, the costs of appraising, printing, employing engineers, architects, attorneys at law, clerical help, other agents or employees, the costs of capitalizing interest or any discount, or both interest and discount, on any bonds of inspection, of any administrative and other expenses of the City appertaining to the project, and of replacement expenses or for payment or security of principal of or interest on any securities, the costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the project, the taking of options, the issuance of securities, the filing or recording of instruments, the levy and collection of special assessments and installments thereof, the costs of reimbursement by the City to any public body, the federal government or any person of any moneys theretofore expended for or in connection with any facility or project, and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the City Council.

*County* means the county in the State of Colorado in which is situated any tract assessed or other property to which the term *county* appertains; and if such property at any time hereafter is located in more than one (1) county, *county* shall mean each county in which the property is located.

*County Assessor* means the county assessor of the county.

*County Clerk* means the county clerk of the county.

*County Treasurer* means the county treasurer of the county.

*Curb and gutter project* means any curb and gutter acquired or improved and appertaining to sidewalks or streets, or both, and all appurtenances and incidentals, including real and other property therefor.

*Disposal* or *dispose* means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition (or any combination thereof) of facilities, other property, any project or an interest therein, herein authorized.

*District* means the geographical area within the City designated and delineated by the City Council as an improvement district, in which each tract to be assessed for a project is situated. A district may consist of noncontiguous tracts.

*Drainage and flood control project* means any natural and artificial watercourses for the collection, channeling, impounding or disposition of storm, flood or surface drainage waters, including ditches, lakes, reservoirs, revetments, canals, levees, dikes, walls, embankments, bridges, sewers, culverts, siphons, sluices, flumes, ponds, dams, retarding basins and other water diversion and storage facilities, pumping station, gauging station, steam gauges, rain gauges, flood warning service and appurtenant telephone, telegraph, radio and television service, and all appurtenances and incidentals necessary, useful or desirable for any such facilities (or any combination thereof), including real and other property therefor.

*Engineer* means:

- a. Any engineer in the permanent employ of the City; or
- b. Any independent, competent engineer directly employed by the City or employed by an engineering, consulting or planning firm retained by the City, in connection with any facility, property, project or power herein authorized.

*Equip* or *equipment* means the furnishing of all necessary or desirable, related or appurtenant facilities, or any combination thereof, appertaining to any facilities, property, project or interest therein, herein authorized.

*Facility* means any of the facilities or other property appertaining to any project herein authorized.

*Federal government* means the United States of America or any agency, instrumentality or corporation thereof.

*Improve* or *improvement* means the extension, widening, lengthening, betterment, alteration, reconstruction, capital repair or other improvement (or any combination thereof) of facilities, other property, any project or an interest therein, herein authorized.

*Mailed notice* or *notice by mail* means the written or printed notice addressed to the last known owner or owners of each tract assessed or to be assessed or other designated person at his or her last known address or addresses at least ten (10) days prior to the designated hearing or other time or event, in the United States mail, postage prepaid, as first-class mail. This notice may be given by either the City Manager, Engineer, Director of Finance, County Treasurer or any deputy thereof, as determined by the City Council. The failure to mail any such notice shall not invalidate any proceedings hereunder. The names and addresses of such property owners shall be obtained from the records of the County Assessor or from such other source or sources as the City Manager, City Clerk, Engineer, Director of Finance, County Treasurer or any deputy thereof so

giving notice deems reliable. Any list of such names and addresses appertaining to any improvement district may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals. Any mailing of any notice herein required shall be verified by the affidavit or certificate of the City Manager, City Clerk, Engineer, Director of Finance, County Treasurer or any deputy thereof mailing the notice, which verification shall be retained in the records of the City at least until all special assessments and securities appertaining thereto have been paid in full or any claim is barred by a statute of limitations.

*Off-street parking project* means parking facilities for the parking of motor vehicles off the public streets, including graded, regraded, graveled, oiled, surfaced, paved, curbed, guttered, drained and sidewalked sites therefor, driveways, ramps, structures, buildings, elevators, traffic control equipment and all appurtenances and incidentals necessary, useful or desirable for off-street parking facilities (or any combination thereof), including real and other property therefor.

*Open space* means open areas and sensitive natural lands or features, intended to provide greenbelt, community separators, buffer zones, wildlife areas, floodplain protection, wetlands, passive and active recreational opportunities, including recreational facilities and amenities, picnic sites, parking areas, rest areas, shelters, trails and other facilities and appurtenances and incidentals necessary, useful or desirable for any such open space.

*Overpass project* means any bridge, viaduct or other structure or facilities for the transportation of pedestrians, motor and other vehicles and utility lines, over any street, stream, railroad tracks and any other way or place, approaches, ramps, structures, crosswalks, sidewalks, driveways, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, artificial lights, pumping equipment, ventilating equipment and all appurtenances and incidentals necessary, useful or desirable for any such overpass (or any combination thereof), including real and other property therefor.

*Owner* as used herein means only persons in whom the record fee title is vested, although subject to lien or encumbrance.

*Park project* means real property, facilities and equipment for parks, including without limitation graded, regraded, graveled, surfaced, drained, cultivated and otherwise improved sites therefor, picnic sites, parking areas, rest areas, shelters, trails, landscaping, sprinkler systems, plazas, auditoriums, arenas, golf course facilities, clubhouses, tennis courts, swimming pools, ball fields, boating facilities, swings, slides, other playground equipment and other recreational facilities and appurtenances and incidentals necessary, useful or desirable for any such park property, facilities and equipment.

*Person* means any human being, association, partnership, firm or corporation, excluding the City, excluding any public body and excluding the federal government.

*Project* means any structure, facility, undertaking or system which the City is herein authorized to acquire, improve, equip, maintain or operate, and including, as a part thereof or as a separate project, beautification, whether natural or otherwise, or the underground installation or relocation of utility lines. A project may be located within or without the City and may consist of all kinds of personal and real property, and nothing herein shall be deemed to require that all property in the

District be contiguous. *Project* includes any improvements enhancing community aesthetic qualities, amenities and the quality of life offered in the area.

*Property* means real property and personal property.

*Public body* means the State of Colorado or any agency, instrumentality or other body corporate thereof, or any county, school district, other type of corporate district or any other corporate and political subdivision of the State, excluding the City and excluding the federal government.

*Publication* or *publish* means publication in at least one (1) newspaper of general circulation in the City. *Publication* or *publish* also means publication for at least once a week for three (3) consecutive weeks by three (3) weekly insertions, the first publication being at least fifteen (15) days prior to the designated time or event. Unless otherwise so stated, it shall not be necessary that publication be made on the same day of the week in each of the three (3) calendar weeks, but not less than fourteen (14) days shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication. Any publication herein required shall be verified by the affidavit of the publisher and filed with the City Clerk. Nothing herein contained in connection with any provision concerning the publication of an ordinance, either before or after its final passage, shall be construed as requiring its publication in full or in any other manner other than a manner which is in substantial compliance with the same method for the passage of an ordinance as provided in Sections 5.7 through 5.12, inclusive, of the City Charter.

*Real property* means:

- a. Land, including land under water;
- b. Buildings, structures, fixtures and improvements on land;
- c. Any property appurtenant to or used in connection with land; and
- d. Every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years and liens, charges or encumbrances by way of judgment, mortgage or otherwise, and the indebtedness secured by such liens.

*Sanitary sewer project* means facilities appertaining to a municipal sanitary sewerage system for the collection, interception, transportation, treatment, purification and disposal of sewage, liquid wastes, solid wastes, night soil and industrial wastes, including without limitation a sewage treatment plant, sewage purification and treatment works and disposal facilities, drying beds, pumping plant and station, ejector station, gauging station, inlets, connections, laterals, other collection lines, outfalls, outfall sewers, trunk sewers, intercepting sewers, force mains, submains, water lines, sewer lines, conduits, ditches, pipes and transmission lines, engines, valves, pumps, meters, apparatus, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful or desirable for the collection, interception, transportation, treatment, purification and disposal of sewage, liquid wastes, solid wastes, night soil and industrial wastes (or any combination thereof), including land and other property therefor.

*Securities* means any bonds, temporary bonds, interim warrants or other obligations of the City appertaining to any project, or interest therein, herein authorized.

*Sidewalk project* means any sidewalk primarily for use by pedestrians, including without limitation graded, regraded, graveled, surfaced, macadamized and paved pedestrian rights-of-way, artificial lights and lighting equipment and all appurtenances and incidentals (or any combination thereof), including real and other property therefor.

*Special benefit* means any benefit conferred upon property that is greater than or different from that conferred upon properties in the City as a whole by an improvement or acquisition. Among the facts to be considered in determining the existence of a special benefit are:

- a. Increased market value;
- b. Improvement in safety or convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets;
- c. Improved drainage;
- d. Alleviation of health or sanitation hazards;
- e. Any reduction in the maintenance costs of particular property or of public property;
- f. Adaptability of the property to a superior or more profitable use;
- g. Improved availability of public water or sewer services to the property; and
- h. In the case of undeveloped property, the installation of an improvement which would otherwise be required for development of the property.

*Special surplus and deficiency fund* means the special account and special fund created and maintained with moneys remaining to the credit of a district when all outstanding bonds of the district have been paid, pursuant to Section 11.1 of the Charter and to Section 12-30-750 hereof.

*Storm sewer project* means facilities appertaining to a municipal storm sewer system for the collection, interception, transportation and disposal of rainfall and other stormwaters, including without limitations, gauging stations, inlets, connections, laterals, other collection lines, outfalls, outfall sewers, trunk sewers, intercepting sewers, force mains, submains, water lines, sewer lines, canals, pipes, transmission lines, natural and artificial watercourses, wells, ditches, reservoirs, revetments, engines, valve pumps, meters, apparatus, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful or desirable for the collection, interception, transportation and disposal of rainfall and other stormwaters (or any combination thereof), including real and other property therefor.

*Street* means any street, avenue, boulevard, alley, highway or other public right-of-way used for any vehicular traffic, but excluding a sidewalk designed primarily for use by pedestrians.

*Street project* means any street, including without limitation, grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curb cuts, curbs, gutters, culverts, catch basins, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, sprinkling facilities, artificial lights and lighting equipment, parkways, grade separators, rest areas, landscaping, street furniture, plazas, barriers, sound mitigation facilities, traffic separators and traffic control equipment and all appurtenances and incidentals (or any combination thereof), including real and other property therefor, and any storm sewers, sanitary sewers and water lines which in the opinion of the City Council are needed for any street which is also to receive any improvement heretofore described in this Paragraph.

*Taxes* means general (ad valorem) taxes.

*Tract* means any tract, lot or parcel of land for assessment purposes, whether platted or unplatted. It shall also include in its meaning the franchise of any railroad whose tracks lie either lengthwise or crosswise within any street improved under this Article. Tracts may be designated in accordance with any recorded map or plat, unplatted tracts by any definite description and franchises by the name of the corporation owning or holding the same. All land, platted and unplatted, shall be designated by address, commonly known location or other description sufficiently definite to identify the tract.

*Underpass project* means any tunnel, tube or other structure or facilities for the transportation of pedestrians, motor and other vehicles and utility lines, under any street, stream, railroad tracks and any other way or place, approaches, ramps, structures, cross-walks, sidewalks, driveways, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, artificial lights, pumping equipment, ventilating equipment and all appurtenances and incidentals necessary, useful or desirable for any such underpass (or any combination thereof), including real and other property therefor.

*Water project* means facilities appertaining to a municipal water system for the collection, transportation, treatment, purification and distribution of water, including without limitation, springs, wells, other raw water sources, basin cribs, dams, reservoirs, towers, other storage facilities, pumping plants and station, filter plant, purification system, water treatment facilities, power plant, waterworks plant, gauging station, valves, standpipes, connections, hydrants, conduits, flumes, sluices, canals, ditches, water transmission and distribution mains, pipes, lines, laterals and service pipes, engines, boilers, pumps, meters, apparatus, tools, equipment, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful or desirable for the acquisition, transportation, treatment, purification and distribution of potable water or untreated water for domestic, commercial and industrial use and irrigation (or any combination thereof), including real and other property therefor. (Ord. 1882 §1, 2006)

#### **Sec. 12-30-30. Rules of construction.**

The construction and definitions set forth in Article 1-14 of this Code shall apply unless otherwise defined in this Article. Except where the context otherwise requires, the definitions and constructions of Article 1-14 and those set forth herein shall govern the construction hereof:

(1) Figures may be used instead of words, and words may be used instead of figures in all notices, proceedings and documents appertaining hereto.

(2) Each tract in a district need not be separately described except in the assessment rolls.

(3) Any cost or estimated cost may be stated as a designated amount per front foot, per square foot, per other unit appertaining to the method of prorating costs and of computing assessments, or per lot of a given size and proportionate amounts for other lots, except in the case of assessments. (Ord. 1882 §1, 2006)

**Sec. 12-30-40. General powers.**

The City Council, on behalf of the City and in its name, without any election, shall have power from time to time to acquire, improve, equip, operate and maintain, within or without the City, or both within and without the City, any project, including without limitation:

- (1) A combined sewer project;
- (2) A curb and gutter project;
- (3) A drainage and flood control project;
- (4) An off-street parking project;
- (5) An open space project;
- (6) An overpass project;
- (7) A park project;
- (8) A sanitary sewer project;
- (9) A sidewalk project;
- (10) A storm sewer project;
- (11) A street project;
- (12) An underpass project; and
- (13) A water project. (Ord. 1882 §1, 2006)

**Sec. 12-30-50. Collateral powers.**

The City Council, on behalf of the City and in its name, for the purpose of defraying all the cost of acquiring or improving, or acquiring and improving, any project or projects herein authorized, or any portion of the cost thereof not to be defrayed with moneys available therefor from the general fund, any special fund or otherwise, shall have power hereunder:

- (1) To levy assessments against assessable property within the City and to cause the assessments so levied to be collected;

(2) To pledge the proceeds of any assessments levied hereunder to the payment of special assessment bonds and to create liens on such proceeds to secure such payments;

(3) To issue special assessment bonds approved by vote as herein provided; and

(4) To make all contracts, to execute all instruments and to do all things necessary or convenient in the exercise of the powers granted herein or in the performance of the City's duties or in order to secure the payment of its bonds; provided, however, that no encumbrance, mortgage or other pledge of property (excluding any money) of the City is created thereby; and provided that no property (excluding any money) of the City is liable to be forfeited or to be taken in payment of the bonds. (Ord. 1882 §1, 2006)

**Sec. 12-30-60. Initiating procedure.**

The procedure for acquiring or improving, or acquiring and improving, any project can be initiated in one (1) of the following ways:

(1) City-initiated method by resolution of intent;

(2) City-initiated method by provisional order; or

(3) Petition method. (Ord. 1882 §1, 2006)

**Sec. 12-30-70. City-initiated method; resolution of intent generally.**

Whenever the City Council shall be of the opinion that the interest of the City requires any project, the City Council may initiate said project by a resolution of intent. The resolution of intent shall describe the project in general terms, including a general description of the location thereof. In addition, the resolution of intent may request the City Manager or his or her designee to prepare and provide to the City Council:

(1) A description of the type or types of construction proposed and a comparison of the costs thereof, including incidental costs;

(2) Preliminary plans of the contemplated project;

(3) A recommendation as to what part or portion of the expense thereof is of special benefit, and therefore, shall be paid by assessments;

(4) A recommendation on what part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments;

(5) A recommendation as to the basis by which the cost will be apportioned and assessments will be levied;

(6) A recommendation as to the manner or method of payment of the costs of the project, including the costs paid by assessments and costs defrayed with moneys derived from other than the levy of assessments;

(7) An assessment plat showing the area to be assessed and the amount of maximum benefits estimated to be assessed against each tract in said assessment area; and

(8) Such other and further information as may be requested by the City Council. (Ord. 1882 §1, 2006)

**Sec. 12-30-80. Materials prepared by City Manager.**

The City Manager or his or her designee shall forthwith prepare and file with the City Clerk the information requested by the City Council in accordance with Section 12-30-70 above. (Ord. 1882 §1, 2006)

**Sec. 12-30-90. Order by Council.**

The City Clerk shall advise the City Council of receipt of the required information and the City Council shall schedule a public hearing to consider the same. Notice of the public hearing shall be given as provided herein. If the City Council finds that the information provided by the City Manager is satisfactory, the City Council shall adopt a provisional order by resolution to the effect that such project shall be acquired or improved, or both acquired and improved. (Ord. 1882 §1, 2006)

**Sec. 12-30-100. City-initiated method; provisional order generally.**

(a) The City Council may initiate the proposed project by the adoption of a provisional order resolution upon receipt of the following information from the City Manager or his or her designee:

- (1) A general description of the project;
- (2) A general description of the location of the project;
- (3) A description of the type or types of construction proposed and a comparison of the costs thereof, including incidental costs;
- (4) Preliminary plans of the contemplated project;
- (5) A recommendation as to what part or portion of the expense thereof is of special benefit and, therefore, shall be paid by assessments;
- (6) A recommendation on what part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments;
- (7) A recommendation as to the basis by which the cost will be apportioned and assessments will be levied;
- (8) A recommendation as to the manner or method of payment of the costs of the project, including the costs paid by assessments and costs defrayed with moneys derived from other than the levy of assessments; and

(9) An assessment plat showing the area to be assessed and the amount of maximum benefits estimated to be assessed against each tract in said assessment area.

(b) It is intended that the procedure provided in this Section is an alternative to the resolution of intent provided in Section 12-30-70 of this Article. (Ord. 1882 §1, 2006)

**Sec. 12-30-110. Petition method; initiation procedure.**

(a) The owner or owners of lands to be assessed in the proposed improvement district for not less than fifty percent (50%) of the entire cost of any project, including all incidental expenses, comprising more than fifty percent (50%) of the area of such territory and also comprising a majority of the landowners residing in the territory, may by written petition initiate any project which the City Council is authorized to initiate, subject to the following limitations:

(1) The City Council may incorporate such project in any improvement district or districts.

(2) The City Council need not proceed with any such project or any part thereof after holding a hearing thereon for the purpose of receiving comments on the proposed project, including protests and objections by the owner of any tract to be assessed or other interested persons, and determining by resolution that the designated project is not in the public interest for reasons stated in the resolution.

(3) Any particular kind of project, any material therefor, or any part thereof need not be acquired or located, as provided in the petition, if after receiving the petition, the City Council determines by resolution that the acquisition of the designated project probably is not feasible for a reason or reasons stated in the resolution.

(b) Prior to consideration of the petition, the City Council may, by resolution, require a deposit by certified funds check or a pledge of property in an amount or value sufficient to defray the expenses and costs incurred by the City taken preliminary to and in the attempted acquisition or improvement of the project designated in the petition. If such deposit or pledge is not made with the Director of Finance within twenty (20) days after written notification to the circulator of the petition, the petition will be deemed withdrawn. An additional deposit or pledge may from time to time be similarly so required as a condition precedent to the continuation of action by the City. (Ord. 1882 §1, 2006)

**Sec. 12-30-120. Payment of costs.**

Whenever a deposit or pledge is made pursuant to Section 12-30-110 and thereafter the City Council determines that the proposed project is not feasible as provided in Paragraph 12-30-110(a)(2), the City Council may require that all or any portion of the costs incurred by the City after its receipt of the petition shall be defrayed from the deposit or the proceeds of pledged property in the absence of such defrayment of costs by petitioners or other interested persons within twenty (20) days after determination of the amount to be defrayed. (Ord. 1882 §1, 2006)

**Sec. 12-30-130. Subsequent procedure.**

Upon the filing of a petition under Section 12-30-110 above, the City Council shall proceed in the same manner as is provided for proceedings initiated by the City Council, except as the context otherwise expressly provides. Notwithstanding the foregoing, if the petition is signed by the owner or owners of one hundred percent (100%) of the property to be assessed in the proposed improvement district, the City Council may, at its discretion, waive all or any of the requirements hereof concerning the creation of the proposed improvement district, except for the requirements of Sections 12-30-300 to 12-30-330, inclusive. (Ord. 1882 §1, 2006)

**Sec. 12-30-140. Combination of projects.**

(a) More than one (1) project may be combined in one (1) improvement district when the City Council determines that such projects may be combined together in an efficient and an economical improvement district.

(b) If in the combination of projects, they shall be separate and distinct by reason of substantial difference in their character or location, or otherwise, each such project shall be considered as a unit or quasi-improvement district for the purpose of petition, remonstrance and assessment.

(c) In case of such combination, the City Council shall designate the project and the area constituting each such unit, and in the absence of an arbitrary and an unreasonable abuse of discretion, its determination that there is or is not such a combination and its determination of the project and the area constituting each such unit shall be final and conclusive.

(d) The costs of acquiring or improving, or acquiring and improving, each such project shall be segregated from the levy of assessments, and an equitable share of the incidental costs shall be allocated to each such unit. (Ord. 1882 §1, 2006)

**Sec. 12-30-150. Effect of estimates.**

(a) Any estimate of cost required or authorized herein shall not constitute a limitation upon such cost nor a limitation upon the rights and powers of the City Council or of any officers, agents or employees of the City, except as herein otherwise expressly stated.

(b) No assessment, however, shall exceed the amount of the estimate of maximum special benefits to the tract assessed from any project. (Ord. 1882 §1, 2006)

**Sec. 12-30-160. Provisional order hearing; purpose.**

In the provisional order resolution, the City Council shall set a time at least twenty (20) days thereafter and a place at which the owners of the tracts to be assessed or any other persons interested therein may appear before the City Council and be heard as to:

- (1) The propriety and advisability of acquiring or improving, or acquiring and improving, the project or projects provisionally ordered;
- (2) The estimated cost thereof;

(3) The estimated amount thereof to be assessed against each tract in the improvement district; and other matters related to the proposed project. (Ord. 1882 §1, 2006)

**Sec. 12-30-170. Manner of giving notice.**

Notice of the hearing shall be given:

- (1) By publication; and
- (2) By mail. (Ord. 1882 §1, 2006)

**Sec. 12-30-180. Proof of notice.**

Proof of publication of notice shall be by affidavit of the publisher, and mailing by the City Manager, City Clerk or any deputy mailing the notice. (Ord. 1882 §1, 2006)

**Sec. 12-30-190. Contents of notice generally.**

The notice of hearing shall state:

(1) A general description of the project or projects proposed (without setting forth minor details or incidentals);

(2) The estimated cost of the project, or the estimated total amount of projects, and the part or portion, if any, to be paid from sources other than assessments;

(3) The basis for apportioning the assessments, which assessments shall be in proportion to the special benefits derived to each of the several tracts comprising the assessable property on an equitable basis;

(4) The number of installments and the time in which the assessments will be payable;

(5) The maximum rate of interest on unpaid installments of assessments;

(6) The extent of the improvement district to be assessed (by boundaries or other brief description);

(7) The time and the place when and where the City Council will consider the ordering of the proposed projects and will hear all comments, protests and objections by the owner of any tract to be assessed or other interested persons. It is requested that comments, protests and objections be made in writing and filed with the City Clerk at least three (3) days prior to the public hearing, or the same may be made verbally at the public hearing by the owner of any tract to be assessed or by any interested person;

(8) The fact that the description of the tracts to be assessed, the maximum amount of benefits estimated to be conferred on each such tract, and all proceedings in the premises are on file and can be seen and examined at the office of the City Clerk or other designated location during regular business hours; and

(9) That, regardless of the basis used for apportioning assessments, the assessments shall be in proportion to the special benefits. (Ord. 1882 §1, 2006)

**Sec. 12-30-200. Change in District.**

Except as provided in Section 12-30-210 below, no substantial change in the improvement district, details, preliminary plans or specifications or estimates shall be made after the first publication or mailing of notice to property owners, whichever occurs first, except for any deletion of a portion of a project and property from the proposed program and improvement district or any assessment unit. (Ord. 1882 §1, 2006)

**Sec. 12-30-210. Authority of City Manager.**

The City Manager or his or her designee may make minor changes in time, plans and materials entering into the work at any time before its completion. (Ord. 1882 §1, 2006)

**Sec. 12-30-220. Protests; adjournment.**

(a) On the date and at the place fixed for a provisional order hearing, any and all property owners in such project and other interested persons may present their questions, objections and comments in respect to the proposed projects to the City Council.

(b) The City Council may adjourn the hearing from time to time. (Ord. 1882 §1, 2006)

**Sec. 12-30-230. Termination of proceeding.**

After the consideration of all materials, information and comments made at the public hearing, the City Council may determine that the proposed project or part thereof is not in the public interest, and upon motion or resolution, order that the proceedings relative to the project or for any part shall stop and shall not be begun again until the adoption of a new resolution. (Ord. 1882 §1, 2006)

**Sec. 12-30-240. Waiver of objections.**

Any complaint, protest or objection to the regularity, validity and correctness of the proceedings and instruments taken, adopted or made prior to the date of a provisional order hearing shall be deemed waived unless presented in writing on specific grounds at the time and in the manner herein provided. (Ord. 1882 §1, 2006)

**Sec. 12-30-250. Protested improvements.**

If at or prior to the hearing, a written remonstrance against the making of the improvements or acquisition proposed is filed with the City Clerk, signed by the owners of a majority of all property benefited and constituting the basis of the assessment as the City Council may determine, the improvements or acquisition shall not be made unless the City pays one-half (½) or more of the total cost of the improvements or acquisition with funds derived from sources other than the levy of special assessments; provided, however, that this Section shall not apply to sidewalks, water mains, sanitary sewer or storm sewers and their appurtenances and improvements and that, in relation to such sidewalk, sewer and water improvements, the City Council shall have the authority to assess the

entire cost of the improvements to the properties specially benefited without regard to any remonstrance. (Ord. 1882 §1, 2006)

**Sec. 12-30-260. Appealing adverse order.**

Any person filing with the City Council a complaint, protest or objection on any one (1) or more specific grounds in writing, as provided in this Article, shall have the right within fifteen (15) days after the City Council has finally passed on such complaint, protest or objection by resolution or by ordinance, to commence an action or suit in any court of competent jurisdiction to correct or to set aside only such a determination of the City Council on any such specific and written complaint, protest or objection; and thereafter, all actions or suits attacking the validity of the preliminary plans, any preliminary estimate of cost, assessment plat, other proceedings and any maximum amount of benefits shall be perpetually barred. (Ord. 1882 §1, 2006)

**Sec. 12-30-270. Post-hearing procedure; decision by City Council to proceed.**

After the public hearing, the City Council shall determine whether to proceed with the improvement district and with each assessment unit therein, if there are more than one (1). (Ord. 1882 §1, 2006)

**Sec. 12-30-280. Modifications.**

If the City Council desires to proceed and desires any modification to the proposed project, district or assessment roll, it may by motion or by resolution direct the City Manager to prepare and to present to the City Council:

(1) A revised and detailed estimate of the total cost, including, without limiting the generality of the foregoing, the cost of acquiring or improving, or acquiring and improving, each proposed project and of each of the incidental costs, which revised estimate shall not constitute a limitation for any purpose, except as herein otherwise provided;

(2) Full and detailed plans and specifications for each proposed project designed to permit and to encourage competition among the bidders if any project is to be acquired by construction contract; and

(3) A revised map and assessment plat showing, respectively, the location of each project and the tracts to be assessed therefor, not including any area or project not before the City Council at a provisional order hearing. (Ord. 1882 §1, 2006)

**Sec. 12-30-290. Construction units.**

The resolution described in Section 12-30-280 above, a separate resolution or the ordinance creating the improvement district may combine or may divide the proposed project or projects in the district and any other facilities into suitable construction units for the purpose of letting separate and independent contracts, regardless of the extent of any project constituting an assessment unit and regardless of whether a portion or none of the cost of any project is to be defrayed other than by the levy of special assessments. Nothing herein contained shall be construed as not requiring the

segregation of costs of unrelated projects for assessment purposes, as herein provided. (Ord. 1882 §1, 2006)

**Sec. 12-30-300. Creation of district; when authorized.**

When an accurate estimate of cost, full and detailed plans, specifications and maps are prepared and are satisfactory to the City Council, it shall by ordinance create the district and order the proposed project or projects to be acquired or improved, or acquired and improved. The ordinance creating a district shall prescribe:

- (1) The extent of the improvement district by boundaries or by other brief description and similarly of each assessment unit therein, if there are more than one (1);
- (2) The kind and location of each project proposed (without mentioning minor details);
- (3) The amount or the proportion of the total cost to be defrayed by assessments, the method of levying assessments, the number of installments and the times in which the costs assessed will be payable;
- (4) The character and the extent of any construction units; and
- (5) The order of the work to be done. (Ord. 1882 §1, 2006)

**Sec. 12-30-310. Changes by City Manager or by amendment to ordinance.**

The City Manager or his or her designee may further revise the cost, plans and specifications, and map from time to time for all or any part of any project; and the ordinance may be appropriately amended prior to letting any construction contract therefor and prior to any property being acquired or any work being done other than by independent contract let by the City. (Ord. 1882 §1, 2006)

**Sec. 12-30-320. Methods of acquisition or improvement; generally.**

Any construction work for or acquisition of any project shall be done in any one (1) or more of the following ways:

- (1) By independent contract;
- (2) By use of municipally owned or leased equipment and municipal officers, agents and employees;
- (3) By any public body or by the federal government acquiring or improving a project or any interest therein which is herein authorized which results in general benefits to the City and in special benefits to the assessable property being assessed therefor by the City within its boundaries; or
- (4) By purchase of existing improvements at a cost determined acceptable by the City. (Ord. 1882 §1, 2006)

**Sec. 12-30-330. Powers with respect to acquisition, assessments, bonds.**

No project herein authorized or any interest may be located on land, easement or other real property owned by the federal government or by a public body, provided that the City shall have the power:

(1) To acquire or improve, or both acquire and improve, or to cooperate in the acquisition or improvement of, or both the acquisition and improvement of: the project or any interest therein with the federal government or with any public body pursuant to agreement between or among the City and such other bodies corporate and politic so long as the project or the interest therein acquired or improved, or both acquired and improved, results in general benefits to the City and in special benefits to the assessable property being assessed therefor by the City;

(2) To levy special assessments on such assessable property to defray all or any part of the costs of the project or any interest therein or to defray all or any part of the City's share of such costs if all costs are not being defrayed by the City; and

(3) To issue bonds after approval thereof at an election directed by the City Council and to exercise other powers herein granted related to such acquisition or improvement, or both such acquisition and improvement. (Ord. 1882 §1, 2006)

**Sec. 12-30-340. Construction contracts; when authorized.**

No contract for doing construction work for acquiring or improving the project contemplated shall be made or shall be awarded, nor shall the City Council incur any expense or any liability in relation thereto, except for maps, plats, diagrams, estimates, plans, specifications and notices until after the provisional order hearing and notice thereof provided for herein have been given and had. (Ord. 1882 §1, 2006)

**Sec. 12-30-350. Advertising for proposals.**

Nothing contained herein shall be construed as preventing the City Council from advertising by publication for proposals for doing the work whenever the City Council sees fit, but the contract shall not be made or shall not be awarded before the time stated in the preceding Section. (Ord. 1882 §1, 2006)

**Sec. 12-30-360. Use of existing improvements.**

After the provisional order hearing and at the time of the passage of the ordinance creating any improvement district and any projects for the improvement district, or any amendment thereof, if any tract or property to be assessed in the improvement district has existing improvements conforming to the general plan, the same may be adopted in whole or in part or may be changed to conform to the general plan, if deemed practical; and the owner of such property shall, when the assessment is made, be credited with the amount which is saved by reason of adapting or of adopting such existing improvements. (Ord. 1882 §1, 2006)

**Sec. 12-30-370. Interim payments.**

(a) The City Council may authorize interim payments to any contractor or to defray any costs of the project as the same become due from time to time until moneys are available therefor from the levy and collection of assessments and from issuance of bonds, if any. Such authorized payments shall be special obligations payable from designated special assessments, any bond proceeds and any other moneys designated to be available for the reimbursement thereof.

(b) Any such payments shall be made for costs and construction work approved by the City Manager or his or her designee. (Ord. 1882 §1, 2006)

**Sec. 12-30-380. Order for proposed assessment roll; form.**

Upon receipt of the City Manager's statement of cost, or if assessments are to be levied on estimates at any time after (a) the award of the construction contract or contracts or (b) the determination of cost made by the City Manager that there is to be no construction contract, the City Council by resolution:

(1) Shall determine the cost of the project to be paid by the assessable property in the improvement district;

(2) Shall order the City Manager to make out an assessment roll containing, among other things:

a. The name of each last-known owner of each tract to be assessed or, if not known, that the name is "unknown"; and

b. A description of each tract to be assessed and the amount of the proposed assessment thereon, apportioned upon the basis for assessments stated in the provisional order for the hearing on the project.

(3) In fixing the amount or the sum of money that may be required to pay the costs of the project, the City Council need not necessarily be governed by the estimates of the costs of such project provided for herein, but the City Council may fix such other sum within the limits prescribed as it may deem necessary to cover the cost of the project.

(4) If by mistake or otherwise any person is improperly designated in the assessment roll as the owner of any tract or if the same is assessed without the name of the owner or in the name of a person other than the owner, such assessment shall not for that reason be vitiated, but it shall in all respects be as valid upon and against such tract as though assessed in the name of the owner thereof; and when the assessment roll has been confirmed, such assessment shall become a lien on such tract and shall be collected as provided by law. (Ord. 1882 §1, 2006)

**Sec. 12-30-390. Method of computing and limitations upon assessments.**

(a) If the assessment is made upon the basis of frontage, the Engineer shall assess each tract with such relative portion of the whole amount to be levied as the length of front of such premises bears to

the whole frontage of all the tracts to be assessed, and the frontage of all tracts to be assessed shall be deemed to be the aggregate number of feet as determined upon for assessment by the Engineer.

(b) If the assessment is directed to be according to an area, lot, zone or another equitable basis other than a front-foot basis, the Engineer shall assess upon each tract such relative portion of the whole sum to be levied as is proportionate to the estimated benefit according to such basis.

(c) No assessment shall exceed the amount of the estimate of maximum special benefits to the tract assessed.

(d) The amount of any difference between the amount of any assessment levied against any tract and the amount which would have been levied against said tract except that it would then have exceeded the limitation in Subsection (c) above shall be defrayed by the City by other than the levy of assessments. (Ord. 1882 §1, 2006)

#### **Sec. 12-30-400. Determination of assessable tracts.**

The City Council shall determine what amount or part of every expense shall be charged as an assessment and the tracts upon which the same shall be levied, and as often as the Council deems it expedient, it shall require all of the several tracts chargeable therewith respectively to be assessed hereunder. (Ord. 1882 §1, 2006)

#### **Sec. 12-30-410. Preparation of proposed roll.**

(a) The City Manager or his or her designee shall prepare a proposed assessment roll and state a proposed assessment therein upon each tract to be assessed, and by such proposed assessments, the whole amount or amounts of all charges so directed to be levied upon each of such tracts respectively shall defray the costs of the project. When completed, he or she shall report the proposed assessment roll to the City Council.

(b) When the proposed assessment roll has been reported to the City Council, the same shall be filed in the office of the City Clerk. (Ord. 1882 §1, 2006)

#### **Sec. 12-30-420. Notice of assessment hearing.**

(a) Upon receiving the proposed assessment roll, the City Council by resolution:

(1) Shall fix a time and a place when and where complaints, protests and objections that may be made in writing or may be made verbally concerning the same by the owner of any tract or by any person interested may be heard; and

(2) Shall order the City Clerk to give notice of said hearing.

(b) The City Clerk shall give notice by publication and by mail of the time and the place of such hearing, which notice shall also state:

(1) That the proposed assessment roll is on file in his or her office;

(2) The date of filing the same;

(c) The time and the place when and where the City Council will hear all complaints, protests and objections that may be made in writing or may be made verbally to the assessment roll and to the proposed assessments by the parties thereby aggrieved; and

(d) That any complaint, protest or objection to the regularity, validity and correctness of the proceedings, of said assessment roll, of each assessment contained therein and of the amount thereof levied on each tract shall be deemed waived unless filed in writing on specific grounds with the City Clerk at least three (3) days prior to the assessment hearing. (Ord. 1882 §1, 2006)

**Sec. 12-30-430. Assessment hearing.**

(a) At the time and the place so designated, the City Council shall hear and shall determine any written complaint, protest or objection filed, any verbal complaint, protest or objections or comments expressed in respect to the proposed assessments, to the proposed assessment roll or to the assessment procedure; and the City Council may adjourn the hearing from time to time.

(b) The City Council by resolution shall have the power in its discretion to revise, correct, confirm or set aside any assessment and to order that such assessment be reviewed and resubmitted to the City Council for further consideration at such time as the public hearing may be continued. (Ord. 1882 §1, 2006)

**Sec. 12-30-440. Levy of assessments.**

(a) After the assessment roll is in final form and is confirmed by resolution as provided in Section 12-30-430 above, the City Council shall by ordinance adopt the assessment roll as so modified, if modified, and, as confirmed by such resolution, levy the assessments.

(b) Such decision, resolution and ordinance shall be a final determination of the regularity, validity and correctness of the proceedings, of the assessment plat, of said assessment roll, of each assessment contained therein and of the amount thereof levied on each tract.

(c) Such determination by the City Council shall be conclusive upon the owners of the property assessed.

(d) The ordinance adopting the assessment roll shall be prima facie evidence in all courts and tribunals of the regularity of all proceedings preliminary to the making thereof and the validity of the assessments and the assessment roll. (Ord. 1882 §1, 2006)

**Sec. 12-30-450. Appeal of adverse determination.**

(a) Within the fifteen (15) days immediately succeeding the final publication of the assessment ordinance, any person who has filed a complaint, protest or objection on specific grounds in writing, as hereinbefore provided, shall have the right to commence an action or a suit in any court of competent jurisdiction to correct or to set aside the City Council's denial of the complaint, protest or objection.

(b) Thereafter, all actions or suits attacking the regularity, validity and correctness of the proceedings, of the assessment plat, of said assessment roll, of each assessment contained therein and of the amount thereof levied on each tract, including without limiting the generality of the foregoing, the defense of confiscation, shall be perpetually barred. (Ord. 1882 §1, 2006)

**Sec. 12-30-460. Thirty-day payment period; deferred payments.**

(a) All assessments made in pursuance of the assessment ordinance shall be due and payable without demand within thirty (30) days after its publication upon its final passage.

(b) The City Council may provide in the assessment ordinance that any payment in full of the assessment within thirty (30) days shall receive a five-percent discount on the assessment.

(c) Each such assessment or any part thereof may at the election of the owner be paid in installments with interest as hereinafter provided whenever the City Council so authorizes the payment of assessments.

(d) Failure to pay the whole assessment within said period of thirty (30) days shall be conclusively considered an election on the part of all persons interested, whether under disability or otherwise, to pay in installments the amount of the assessment then unpaid.

(e) All persons so electing to pay in installments shall be conclusively considered and held as consenting to the project for which each such assessment was levied, and such election shall be conclusively considered and held as a waiver of any and all rights to question the power of jurisdiction of the City to acquire or improve, or acquire and improve, the project, the quality of the work, the regularity or sufficiency of the proceedings or the validity or correctness of the assessment.

(f) The owner of any tract assessed may at any time pay the whole unpaid principal and the interest accrued to the next interest payment date, together with any prepayment premium and any penalties appertaining thereto.

(g) Subject to the foregoing provisions, all installments, both of principal and interest, shall be payable at such times as may be determined in and by the assessment ordinance. (Ord. 1882 §1, 2006)

**Sec. 12-30-470. Delinquency.**

If the entire amount of the assessment is not paid to the City by October 31 of the assessment year, then the entire amount outstanding, including the interest rate and the number of remaining installment years, shall be certified to the County Treasurer to be collected in annual installments in addition to the other real property taxes due in each installment year as more fully set forth in Section 12-30-530 of this Article. (Ord. 1882 §1, 2006)

**Sec. 12-30-480. Limitations upon deferred payments.**

(a) The City Council in the assessment ordinance shall state the number of installments in which assessments may be paid, the period of payment, the rate or rates of interest upon the unpaid installments of principal to their respective due dates, any privileges of making prepayments and any premium to be paid to the City for exercising any such privilege, the rate of interest upon unpaid

principal and accrued interest after any delinquency at the rate of one percent (1%) per month, or any fraction thereof and any penalties and collection costs payable after delinquency.

(b) Interest in all cases on the unpaid principal accruing from the date of publishing the assessment ordinance upon its final passage until the respective installment's due dates shall be payable annually or semiannually at a rate or rates established by the City Council in the assessment ordinance.

(c) Nothing contained in this Section shall be construed as limiting the discretion of the City Council in determining whether assessments shall be payable in installments and the time for the first installment of principal or of interest, or of both, and any subsequent installments thereof shall become due. (Ord. 1882 §1, 2006)

**Sec. 12-30-490. Assessment liens.**

(a) The payment of the amount assessed under an assessment ordinance, including each installment thereof, the interest thereon and any penalties and collection costs, shall be secured by an assessment lien upon the tract assessed from the effective date of the assessment ordinance.

(b) Each such lien upon each tract assessed:

(1) Shall be subordinate and junior to any lien thereon for any general (ad valorem) taxes, whether prior in time or not;

(2) Shall be prior and superior to any assessment lien thereon subsequently levied by the City or by any public body;

(3) Shall be subordinate and junior to any assessment lien thereon theretofore levied by the City or by any public body; and

(4) Shall be prior and superior to all liens, claims, mortgages, other encumbrances and titles other than the liens of assessments and general taxes; and all purchasers, mortgagees or encumbrances of any such tract shall hold the same subject to such lien so created, whether prior in time or not.

(c) Each such assessment lien shall continue as to unpaid installments, principal, interest and any penalties and costs until such assessments, the principal thereof, interest thereon and any penalties and costs relative thereto shall be fully paid, unless terminated by the foreclosure of any prior and superior lien on the tract assessed; but installments not yet due shall not be deemed to be within the terms of any general covenant or warranty.

(d) No statute of limitations shall begin to run against any assessment or the assessment lien to secure its payment until after the last installment of principal thereof shall become due.

(e) The City may use any available funds or moneys for the satisfaction of any lien prior in right to any special assessment lien created by the City.

(f) In the resale of any property to which the City has acquired title, the City shall use its best efforts to sell the property for an amount at least equal to the funds or moneys so used plus the amount necessary to satisfy the special assessment lien or liens created by the City, principal, interest, penalties and collection costs.

(g) The moneys received from such a resale in payment for the property shall be used first to satisfy such special assessment lien or liens and thereafter to restore to the fund or funds from which any such prior lien or liens were satisfied and the moneys used therefor.

(h) The City is authorized to acquire and to dispose of property on which there are delinquent taxes or special assessments, or both. (Ord. 1882 §1, 2006)

**Sec. 12-30-500. Division of tract.**

Should any tract be divided, upon sale of a part thereof or by formal subdivision, or otherwise, after a special assessment thereon has been levied and made payable in installments and before the collection of all the installments, the unpaid special assessment and lien therefor shall thereupon become divided equitably according to area, without further action by the City or County. (Ord. 1882 §1, 2006)

**Sec. 12-30-510. Surpluses and deficiencies.**

(a) Should any assessment prove insufficient to pay for the project or the work for which it is levied and the expense incident thereto, the amount of such deficiency shall be paid from the general fund of the City, from its capital improvements fund or from such other account in which moneys are accounted for which may be made available for such purpose by the City Council.

(b) If a greater amount has been collected than was necessary, the excess shall be transferred to the general fund of the City, other capital improvements fund or such other account as may be directed by the City Council. (Ord. 1882 §1, 2006)

**Sec. 12-30-520. Notice of assessment or installment due.**

(a) The Finance Director shall give notice by mail and by publication of the levy of any assessment, of the fact it is payable and of the last day for its payment.

(b) The Finance Director shall give notice by mail and by publication of any installment which is payable and of the last day for its payment, as provided herein or in the assessment ordinance.

(c) Each such notice shall state:

(1) The amount of the assessment or of the installment due, provided that the amount of the assessment or installment due need not be included in the published notice;

(2) The installment provisions for payment of the assessment principal; and

(3) The place of payment.

(d) The failure of the Finance Director to give notice or to do any other act or thing required by this Section shall not affect the assessment or any installment thereof. (Ord. 1882 §1, 2006)

**Sec. 12-30-530. Collection of delinquent assessments by County Treasurer.**

At such time as any assessment or any installment thereof appertaining to any district shall become in default, the Finance Director shall mark the same delinquent on the assessment roll, together with the amount of unpaid principal shown on said assessment roll and accrued interest thereon to the date of delinquency, and the Finance Director shall certify said amounts as shown thereon to the City Council. At its next regular meeting after receiving such certificate, the City Council shall certify said amounts, together with full information as to the dates of delinquency and remaining installments due, to the County Treasurer for collection in the same manner and with the same interest and penalties thereon as other taxes collected by the County Treasurer on behalf of the City; and all of the laws of the State for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption therefrom, shall be applicable to and shall have the same effect with respect to the collection of such assessments. (Ord. 1882 §1, 2006)

**Sec. 12-30-540. Optional filing of claim of lien.**

(a) The City Council may (but is not required) in any assessment ordinance or in any ordinance amendatory thereof provide that the City Clerk, within sixty (60) days after the publication of the assessment ordinance after its final passage, shall make out, sign, attest with the seal of the City and file for record in the office of the County Clerk a claim of lien for the unpaid amount due and assessed against each tract.

(b) When a claim of lien is so filed and any assessment appertaining thereto is paid in full, the City Clerk shall release the lien against any specific tract either by entering and signing a receipt of payment upon the margin of the record thereof or by filing for record in the office of the County Clerk a separate release wherein payment of the assessment, principal, interest and any penalty is recited. (Ord. 1882 §1, 2006)

**Sec. 12-30-550. Duties imposed when special assessments for any project are levied.**

Whenever the City Council shall have provided for any project hereunder or for any similar project heretofore authorized by any other law, shall have levied assessments therefor and shall have issued bonds pursuant hereto or thereto for the financing of the same, then and in such event there are hereby imposed upon the City the following additional duties:

(1) The City shall act as the agency for collection of such assessments and in so doing shall act as trustee for the benefit of such holders of interim warrants or bonds.

(2) In case the City Council shall have created more than one (1) district, the funds of each district shall be kept in a separate fund to be used for the payment of interest and principal.

(3) The City shall prepare annually, and shall make available for inspection in the office of the Finance Director to each holder of bonds, a statement of the financial condition of the district relating to such bonds, which shall include a statement of all delinquencies existing at such time.

(4) Where there is a delinquency continuing for a period of one (1) year in the payment of any installment of such assessment made for a project, the City shall thereafter forthwith proceed with the institution of proceedings to foreclose the assessment lien against the property or properties wherein the delinquency exists, as herein provided.

(5) The holder of any bond issued hereunder or any trustee therefor shall have the right to institute such foreclosure proceedings in the name of the City issuing such bond, if such a delinquency has continued for a period of one and one-half (1½) years and if the City has not theretofore instituted such foreclosure proceedings. The failure of any bondholder or any trustee therefor so to proceed shall not be deemed a waiver of any other right or privilege and shall not relieve the City or any of its officers, agents or employees for any liability for failure to perform any duty. (Ord. 1882 §1, 2006)

**Sec. 12-30-560. Procedure to place previously omitted property upon assessment roll.**

(a) Whenever by mistake, inadvertence or for any cause any tract otherwise subject to assessment within any district shall have been omitted from the assessment roll for any project, the City Council may, upon its own motion or upon the application of the owner of any tract within such district charged with the lien of an assessment for any project, assess the same in accordance with the special benefits accruing to such omitted tract by reason of such project and in proportion to the assessment levied upon other tracts in such district.

(b) In any such case, the City Council shall first pass a resolution setting forth that certain tract or tracts therein described were omitted from such assessment, notifying all persons who may desire to object thereto to appear at a meeting of the City Council at a time specified in such resolution and to present their objection thereto, and directing the Engineer to report to the City Council at or prior to the date fixed for such hearing the amount which should be borne by each such tract so omitted, which notice resolution shall be published and shall be given by mail to the last known owner or owners of each such tract.

(c) At the conclusion of such hearing or any adjournment thereof, the City Council shall consider the matter as though each such tract had been included upon the original roll and may confirm the same or any portion thereof by ordinance.

(d) Thereupon, the assessment on such roll of each omitted tract shall be collected, the payment of which shall be secured by an assessment lien; and a claim of lien for which may be filed for record in the office of the County Clerk as other assessments. (Ord. 1882 §1, 2006)

**Sec. 12-30-570. Irregularities in contracts and assessments.**

(a) Whenever the City Council has made any contract appertaining to any project provided herein or shall hereafter make any assessment against any tract within any district for any project authorized herein and has in making such contract or assessment acted in good faith and without fraud or shall hereafter act in good faith and without fraud, said contract and assessment shall be valid and enforceable as such, and said assessment shall be a lien upon the tract upon which the same purports to be a lien.

(b) It shall be no objection to the validity of such contract, assessment or lien:

(1) That the contract was not awarded in the manner or at the time required hereby or otherwise;

(2) That the same was made by an unauthorized officer or person if the same shall have been confirmed by the authorities of the City; and

(3) That any assessment is based upon an improper basis of benefits to the tract, unless it shall be made to appear that the City authorities acted fraudulently or oppressively in making such assessment.

(c) All assessments which are made by the City authorities in good faith are hereby declared to be valid and in full force and effect and to be collectible in the manner which is now or may hereafter be provided by law for the collection of assessments for the purposes specified in this Article. (Ord. 1882 §1, 2006)

**Sec. 12-30-590. Description of property; notice to transferees.**

(a) It shall be sufficient in any case to describe the tract as the same is platted or recorded or described in any official record, although the same belongs to several persons.

(b) Tracts may be described in accordance with any recorded map or plat, unplatted tracts by any definite description and franchises by the name of the corporation owning or holding the same. Such description may include an address of the tract or a reference to its commonly known location.

(c) Any purchaser, lien holder, assignee or transferee of any tract subject to assessment as herein provided in any district herein provided for, after the first publication of the notice of the provisional order to create such district, shall be held to notice thereof and of all proceedings with reference thereto the same as the owners of such tract at the time of such notice or proceedings. (Ord. 1882 §1, 2006)

**Sec. 12-30-600. Hardship situations and relief.**

(a) The City Council may in the assessment ordinance provide for relief from the assessment installments on property owners with limited financial resources. The assessment ordinance may provide:

(1) Such relief may be provided through an assessment rebate procedure wherein qualifying property owners may be reimbursed for their assessments on an annual basis;

(2) Such relief may be available by deferring payment of the assessment installment until the sale, transfer or conveyance of the property to any other person other than the applicant, or upon death of the applicant;

(3) The terms and conditions for any deferment;

(4) The manner to securing the City's interest should the payment be deferred;

(5) Qualifications for hardship relief;

(6) Documentation necessary for qualification for hardship relief; and

(7) Such other and further matters as determined by the City Council.

(b) If the City Council adopts a hardship relief program providing for rebates, qualifications therefor may be matched with a sliding rebate schedule adopted annually by the City Council.

(c) Hardship relief shall be made available on an annual installment basis only and not for lump sum payment of the assessment. (Ord. 1882 §1, 2006)

**Sec. 12-30-610. Assessment of public property.**

(a) When the City, public body or the federal government (except the federal government in the absence of its consent by Congress to assessment) shall own any tract or shall hold the title to any tract not used as a street or other public right-of-way of the City or other public body, which if owned by a private person would be liable to assessment for benefits to pay for any project herein mentioned, an assessment shall be made against such tract as though such tract were the property of a private person.

(b) If the assessment is not paid as provided by law, suit may be brought in a district court to enforce the collection of the assessment, and the judgment rendered against the City, the public body or the federal government shall be enforced as other judgments there against, provided that no such tract owned thereby shall be sold under any such judgment as the result of any foreclosure of an assessment, or otherwise. (Ord. 1882 §1, 2006)

**Sec. 12-30-620. Railroad assessments.**

The City Council shall have power to assess against the property of any railroad or street railroad occupying or abutting any street ordered to be improved the whole cost of the street project between or under the rails and tracks of said roadbed and within the balance of the right-of-way of said railroad or street railroad, and the City Council shall have power by ordinance to levy an assessment upon the property of said railroad or street railroad, including its roadbed, ties, rails, fixtures, chattels, rights and franchises, which shall constitute an assessment lien which may be enforced either by foreclosure of the lien and sale of said property in the manner provided herein or by suit against the owner. (Nothing herein contained shall be construed as preventing the City from assessing any property of any railroad or street railroad, which property is not peculiarly located as herein provided but which is specially benefited by a project.) (Ord. 1882 §1, 2006)

**Sec. 12-30-630. Sidewalk project.**

In districts for the acquisition or improvement of sidewalks alone or in combination with other improvements, the work may include the necessary grading from curb line to lot line; and, if the sidewalk project is not combined with any other project, the owner of any lot or tract to be assessed shall have the right to construct or to reconstruct his or her own walks in conformity with the plans and specifications for the district within thirty (30) days from the publication of the ordinance authorizing the improvement. (Ord. 1882 §1, 2006)

**Sec. 12-30-640. Statement of cost of project.**

Upon the completion of any project in any district or whenever the total cost of a project or part or parts thereof can be definitely ascertained and the net cost to the City determined, the City Council may direct the City Manager or his or her designee to prepare and furnish to the City Council a statement showing the total cost of the project or of any such part or parts thereof. (Ord. 1882 §1, 2006)

**Sec. 12-30-650. Reassessments.**

Whenever any assessment for any project heretofore or hereafter effected by the City hereunder or under any other law heretofore enacted is in the opinion of the City Council invalid by reason of any irregularity or informality in the proceedings, or if any court of competent jurisdiction heretofore or hereafter adjudges such assessments to be illegal, the City Council shall, whether the project has been effected or not or whether any parts of the assessments have been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. (Ord. 1882 §1, 2006)

**Sec. 12-30-660. Procedure for relevy.**

(a) When an assessment has been or is hereafter so determined to be invalid or illegal, the City Council shall by ordinance order and shall make a new assessment or reassessment upon the tracts which have been or will be benefited by the project to which the invalid assessment appertains to the extent of their proportionate part of the expense thereof, and in case the cost exceeds the actual value of such project, the new assessment or reassessment shall be for and shall be based upon the actual value of the same at the time of the project's completion.

(b) To this end, the City Manager or his or her designee shall make a new assessment roll in an equitable manner with reference to the benefits received, as near as may be in accordance with the law in force at the time such reassessment is made; and when the same has been confirmed and approved by the City Council as provided for the original assessments, the reassessment shall be made, enforced and collected in the same manner that other assessments for such project are made, enforced and collected, provided that all proceedings relative to making the cost of any project chargeable upon property benefited thereby, required and provided by the ordinances of the City prior to the making of the original assessment roll, shall not be included or required within the purpose hereof. (Ord. 1882 §1, 2006)

**Sec. 12-30-670. Procedure for reassessment.**

The procedures for assessments set forth in Sections 12-30-380 through 12-30-630, inclusive, shall apply to reassessments. (Ord. 1882 §1, 2006)

**Sec. 12-30-680. Levy of reassessment; cost and value.**

(a) The fact that the contract has been let or that the project has been acquired or improved, or acquired and improved and otherwise completed in whole or in part shall not prevent the reassessment from being made, nor shall the omission, failure or neglect of any officer or officers to comply with the provisions of the laws governing the City as to petition, notice, resolution to acquire

or improve, or both acquire and improve, estimate, survey, diagram, manner of letting contract or execution of work or any other matter whatsoever connected with the project and the first assessment or assessments thereof, operate to invalidate or in any way to affect the making of the new assessment or reassessment, charging the property benefited with the expense thereof, except as herein otherwise provided.

(b) Such reassessment shall be for an amount which shall not exceed the actual cost and value of the project, together with any interest that shall have lawfully accrued thereon; and such amount shall be equitably apportioned upon the property benefited thereby.

(c) It is the true intent and meaning hereof to make the cost and expense of each local improvement project payable by the tracts benefited by such project by making a reassessment therefor, notwithstanding that the proceedings of the City Council, City Manager, Engineer or other body or any officers thereof may be found irregular or defective, whether jurisdictional or otherwise. (Ord. 1882 §1, 2006)

**Sec. 12-30-690. Credits for prior assessment.**

Whenever any sum or any part thereof levied upon any tract in the assessment so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment of the tract on account of which the same was paid. (Ord. 1882 §1, 2006)

**Sec. 12-30-700. Procedure exclusive.**

The rights and remedies hereinbefore given the taxpayer and the property owner for objecting to, contesting or appealing from the amount, correctness, regularity or validity of such new assessment or reassessment are hereby declared to be exclusive of all other rights, remedies, suits or actions either at law or in equity which might otherwise be available, and to afford him or her a sufficient day in court for the redressing of all rights and grievances that he or she may have in connection with such new assessment or reassessment. (Ord. 1882 §1, 2006)

**Sec. 12-30-710. Application of funds from reassessment to outstanding indebtedness.**

Whenever the City has issued or shall issue bonds to obtain funds to pay for any project which has been actually acquired or improved, or both acquired and improved, and the assessment or assessments levied therefor have failed or shall fail to be valid or sufficient in whole or in part and a new assessment or reassessment has been levied and confirmed, the City is hereby authorized and directed to apply all moneys derived from such assessments, new assessments and reassessments to the payment of the bonds according to their tenor; and the bonds issued for any project actually acquired or improved, or both acquired and improved, shall be valid and binding obligations of the City, payable out of such assessments, new assessments and reassessments, which shall be levied and relieved until payment in full shall have been made. (Ord. 1882 §1, 2006)

**Sec. 12-30-720. Issuance of bonds; authorized.**

After approval by the electors as provided in Section 12-30-730 below, the City Council has the power to contract an indebtedness on behalf of the City and upon the credit thereof by borrowing money or issuing the negotiable interest-bearing bonds of the City for the purpose of providing a fund

to pay such part of the cost of improvements and acquisitions as may be determined by the City Council. No such indebtedness shall be created except by ordinance subject to and otherwise in accordance with this Article and the Charter. The bonds generally shall be issued in such manner, in such form, with such provisions, recitals, terms, covenants and conditions, and with such other details as may be provided by ordinance or ordinances authorizing the bonds. (Ord. 1882 §1, 2006)

**Sec. 12-30-730. Election.**

(a) No bonds shall be issued unless approved by a majority of the electors voting thereon.

(b) In connection with the issuance of bonds payable solely from special assessments, the City Council may provide for the submission of the question of issuing such bonds to all registered electors of the City eligible to vote on the question or that only registered electors who are owners of property within or residents of the district shall be eligible to vote.

(c) In connection with the issuance of bonds payable from special assessments which are additionally secured by a pledge of any other funds of the City, including the surplus and deficiency fund, the Council may provide by ordinance or resolution for the submission of the question of issuing the bonds to all registered electors of the City. (Ord. 1882 §1, 2006)

**Sec. 12-30-740. Approval and issuance of bonds.**

(a) For the purpose of paying all or such portion of the cost of any improvement or acquisition under the provisions of this Article as may be assessed against the property specially benefited, special assessment bonds of the City may be issued of such date, in such form and on such terms, including without limitation provisions for their sale, payment and redemption, as may be prescribed by the City Council, bearing the name of the district and payable in a sufficient period of years after date to cover the period of payment provided and in convenient denominations. All such bonds shall be issued upon estimates approved by the City Council, and the Director of Finance shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the Mayor, countersigned by the Director of Finance, with the corporate seal thereto affixed, and attested by the City Clerk. Such bonds shall be payable out of the moneys collected on account of the assessments made for said improvements. Whenever three-fourths ( $\frac{3}{4}$ ) of the bonds for an improvement constructed under the provisions of this Article have been paid and cancelled and for any reason the remaining assessments are not paid in time to pay the remaining bonds for the district and the interest due thereon, the City shall pay, if so provided in the ordinance authorizing issuance of the bonds, the bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the district. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued until payment in full is made of all the bonds, both principal and interest. The bonds may be used in payment of the cost of the improvement as specified or the City Council, may, after publication, sell a sufficient number of said bonds to pay such cost in cash for the best bid submitted in accordance with the terms of the notice of sale. All bids may be rejected at the discretion of the City Council. In addition, the bonds may be sold on such terms and conditions at a private sale if determined by the City Council to be in the best interests of the City.

(b) All such bonds shall be negotiable in form and bear interest as may be fixed by the City Council not exceeding a maximum net effective interest rate specified by the City Council prior to the use of said bonds in payment for improvements or the sale thereof.

(c) Notwithstanding any other provision of this Article, bonds issued in accordance with the requirements of this Section may be payable from the assessments levied in one (1) or more improvement districts. (Ord. 1882 §1, 2006)

**Sec. 12-30-750. Surplus and deficiency fund.**

When all bonds of a district have been paid, any moneys remaining to the credit of such district may be transferred to a special surplus and deficiency fund, and, whenever there is a deficiency in any improvement district bond fund to meet the payment of outstanding bonds for other improvement districts and interest due thereon or to redeem such outstanding bonds in accordance with any estimated redemption schedule used in connection with the sale of such bonds, the deficiency may be paid from the moneys available therefor in the surplus and deficiency fund. (Ord. 1882 §1, 2006)

**Sec. 12-30-760. Refunding bonds.**

(a) The City Council may issue one (1) or more series of bonds to refund all or any portion of the outstanding bonds issued by one (1) or more improvement districts pursuant to this Article. Any bonds issued to refund all or any portion of the outstanding bonds of one (1) or more improvement districts shall be deemed to be revenue bonds, the refunded bonds shall be deemed to be revenue obligations and the assessments shall be deemed to be revenue.

(b) Any bonds issued pursuant to this Section may refund all or any portion of the outstanding bonds of one (1) or more improvement districts and may be secured by a combination of assessments levied on all or a specifically identified portion of the assessed property located within such districts.

(c) Two (2) or more series of bonds may be issued to refund the outstanding bonds of one (1) or more districts, and each series may be secured by assessments levied on different portions of the assessed property located within the districts that have outstanding bonds.

(d) Except as otherwise provided in Subsection (e) or (f) below in connection with the issuance of refunding bonds pursuant to this Section, the City Council may amend the ordinance imposing the assessment to modify all or any portion of the following terms describing the assessment as specified in the ordinance:

- (1) The rate of interest the City Council charges on unpaid installments;
- (2) Any penalty for prepayment of an assessment;
- (3) The principal balance due and owing on the assessment;
- (4) The dates upon which unpaid assessments are due;
- (5) The number of years over which unpaid assessments are due; or

(6) Any other term specified in the ordinance as necessary to make the ordinance conform to the requirements of this Section.

(e) Before the City Council may amend the ordinance imposing the assessment to increase the amount of principal and interest due and owing under the assessment, the number of years over which unpaid assessments are due, or the amount of any unpaid assessments, the City Council shall:

(1) Obtain consent in writing to the amendment to the ordinance from the owner of each tract of land that would be affected by the amendment; or

(2) Set a place and time, not less than twenty (20) days nor more than forty (40) days after the date of such setting, for a hearing on the proposed amendment.

a. Thereupon, the City Clerk shall cause notice by publication to be made of the pendency of the proposed amendment, a summary of the terms of such amendment as described in Subsection (d) above, and of the time and place of the hearing on the proposed amendment.

b. All complaints and objections made in writing concerning the proposed amendment by the owners of any property in the district shall be heard and determined by the City Council before final action is taken. If the owners of the tracts upon which more than one-half (½) of the affected assessments, measured by the unpaid assessment balance, submit written protests to the amendment to the City Council on or before the date specified in the notice, the City Council shall not adopt the proposed amendment. Any proposed amendment may be modified, confirmed or rescinded prior to passage of the ordinance authorized under Subsection (d) above.

(f) Notwithstanding any other provision of law, in order either to issue refunding bonds or to amend an ordinance imposing an assessment pursuant to this Section, the City Council shall make written findings that:

(1) The obligation of the City shall not be materially or adversely impaired with respect to any outstanding bond secured by the assessments; and

(2) The principal balance of any assessment shall not increase to an amount such that the aggregate amount that is assessed against any one (1) particular tract of land exceeds the maximum benefit to the tract that is estimated to result from the project that is financed by the assessment and refunding of the outstanding bonds. (Ord. 1882 §1, 2006)

**Sec. 12-30-770. Discounts and commissions restricted generally.**

No discount or commission shall be allowed or be paid on or for any bond sale to any purchaser or bidder directly or indirectly except as expressly provided by ordinance. (Ord. 1882 §1, 2006)

**Sec. 12-30-780. Expert services.**

The City Council may employ legal, engineering and other expert services in connection with any project herein authorized and with the authorization, issuance and sale of bonds. (Ord. 1882 §1, 2006)

**Sec. 12-30-790. Use of unexpended balance of proceeds.**

Any unexpended balance of bond proceeds remaining after the completion of the project for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of and the interest on the bonds and shall be used therefor, subject to the provisions as to the times and the methods for their payment as stated in the bonds and in the proceedings authorizing their issuance. (Ord. 1882 §1, 2006)

**Sec. 12-30-800. Validity of bonds.**

The validity of bonds shall not be dependent on or affected by the validity or the regularity of any proceedings relating to the acquisition or improvement, or acquisition and improvement, of any project for which the bonds are issued. (Ord. 1882 §1, 2006)

**Sec. 12-30-810. Use of assessments; payment of bonds.**

(a) The assessments when levied shall be and shall remain a lien on the respective tracts assessed until paid as provided herein.

(b) When assessments are collected, including principal, interest and any penalty, they shall be placed in a special fund and as such shall at all times constitute a sinking fund for and be deemed specially appropriated to the payment of the bonds and the interest thereon and shall not be used for any other purpose until the bonds and the interest thereon are fully paid; or if no bonds are issued, all assessments upon their payment shall be so appropriated and so used to defray the costs of such project.

(c) The bonds, both principal and interest, shall be payable only out of moneys collected on account of the assessments (including installments thereof, interest thereon and any penalties) for the projects in any district, except as hereinafter provided. (Ord. 1882 §1, 2006)

**Sec. 12-30-820. Special obligations.**

(a) Bonds issued pursuant to this Article shall not be a debt of the City, and the City shall not be liable thereon nor shall it thereby pledge its full faith and credit for their payment, nor shall the bonds be payable out of any funds other than the special assessments (including installments thereof, interest thereon and any penalties) and other funds and moneys pledged to the payment thereof, as herein authorized.

(b) Each bond issued under this Article shall recite in substance that said bond and the interest thereon are payable solely from the special assessments and other funds and moneys pledged to the payment thereof.

(c) The payment of bonds shall not be secured by an encumbrance, mortgage or other pledge of property of the City, except for such special assessments and other funds and moneys pledged for the payment of bonds. No property of the City, subject to said exceptions, shall be liable to be forfeited or to be taken in payment of the bonds. (Ord. 1882 §1, 2006)

**Sec. 12-30-830. Additional security.**

The City may further secure the payment of bonds of any district, both as to principal and interest, as may be provided by ordinance and permitted by the Charter. (Ord. 1882 §1, 2006)

**Sec. 12-30-840. Connections to utilities.**

Whenever any district or local improvement providing for street, sidewalk or other such improvements is ordered by the City Council pursuant to Section 12-30-300 and the provisions of this Article, the City Manager may, if he or she deems it advisable, order the owners of the abutting tracts or other property to connect their premises with the water, sewer, gas mains or any other utility adjacent to the premises, and upon default of the owners for twenty (20) days after such order to make such connections, the City may contract for and may make said connections or do the work by day labor in the manner and in accordance with the specifications prescribed for such work; and the whole cost of each connection shall be assessed against the premises with which the connections are made in accordance with the provisions of this Article for the acquisition of improvements, the creation of districts and the defraying of the costs thereof for such districts. (Ord. 1882 §1, 2006)

**Sec. 12-30-850. Waiver of procedures.**

Any of the provisions of this Article may be waived in writing by the owners of all property in the district which is to be assessed, and by the Mayor if the City is to bear any of the costs of the improvements. Such a waiver must state the requirements of this Article which are being waived. No person shall be permitted to withdraw a written waiver once it has been submitted to the City Council for consideration. The authorization for such a waiver shall be contained within the ordinance establishing the district. (Ord. 1882 §1, 2006)

**Sec. 12-30-860. Retention of jurisdiction.**

(a) The City Council may continue the hearing upon any petition or resolution or remonstrance provided for herein and shall retain jurisdiction until the same is fully disposed of.

(b) The City Council shall not lose jurisdiction over the acquiring or improving, or acquiring and improving, of any project, the levy of any assessment or the issuance of any bond or any other matter provided for herein by reason of any adjournment or any delays, errors, mistakes or irregularities on the part of the City Council or any member thereof or any City officer or any person or persons whatsoever. (Ord. 1882 §1, 2006)